



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 7, 2015

Ms. Sandra Kim  
Assistant City Attorney  
City of Austin  
P.O. Box 1088  
Austin, Texas 78767-8828

OR2015-16364

Dear Ms. Kim:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 575383.

The Austin Police Department (the "department") received a request for (1) the number of arrests during a specified 2014 motorcycle rally and the reasons for such arrests; (2) any reports of gang activity during the specified 2014 motorcycle rally and the names of the involved gangs; (3) communications between the department, the city council, and/or the public safety commission regarding gang activity at a specified 2015 motorcycle rally; and (4) safety plans for the specified 2015 motorcycle rally concerning threats of gang activity.<sup>1</sup> You claim the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.

Initially, we note you have submitted a representative sample of information responsive to only some portions of the request. You have not submitted any information responsive to

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<sup>1</sup>We note the department sought and received clarification of this request from the requestor. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

the portion of the request seeking the number of arrests during the specified 2014 motorcycle rally and the reasons for such arrests. Although you state the department has submitted a representative sample of the requested information, we find the submitted information is not representative of all the information to which the requestor seeks access. Please be advised this open records letter applies to only the types of information you have submitted for our review. This ruling does not authorize the department to withhold any information that is substantially different from the type of information you submitted to this office. *See* Gov't Code § 552.302. Therefore, to the extent any information responsive to the portion of the request seeking the number of arrests during the specified 2014 motorcycle rally and the reasons for such arrests existed and was maintained by the department on the date it received the request, we assume the department has released it to the requestor. If the department has not released any such information, it must do so at this time. *Id.* §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. Section 552.101 encompasses chapter 61 of the Code of Criminal Procedure, which addresses intelligence information pertaining to street gangs. Article 61.02 provides, in part, “a criminal justice agency . . . shall compile criminal information into an intelligence database for the purpose of investigating or prosecuting the criminal activities of criminal combinations or criminal street gangs.” Crim. Proc. Code art. 61.02(a). Article 61.03 provides, in relevant part, the following:

(a) A criminal justice agency may release on request information maintained under [Chapter 61 of the Code of Criminal Procedure] to:

- (1) another criminal justice agency;
- (2) a court; or
- (3) a defendant in a criminal proceeding who is entitled to the discovery of the information under Chapter 39.

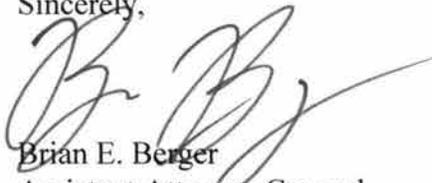
*Id.* art. 61.03(a). Further, article 61.05 of the Code of Criminal Procedure provides release of this information to a person who is not entitled to the information is a Class A misdemeanor. *See id.* art. 61.05(b). You state the submitted information originated from, and is maintained in, the department's criminal gang database pursuant to article 61.02. You further state the requestor is not entitled to obtain the information under article 61.03. Therefore, we conclude the department must withhold the submitted information under

section 552.101 of the Government Code in conjunction with article 61.03 of the Code of Criminal Procedure.<sup>2</sup>

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Brian E. Berger  
Assistant Attorney General  
Open Records Division

BB/akg

Ref: ID# 575383

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>As our ruling is dispositive, we do not address your other arguments to withhold this information.