



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 15, 2015

Ms. Michele Freeland
Legal Assistant
Office of General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2015-19253

Dear Ms. Freeland:

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# 579458 (PIR No. 15-3068).

The Texas Department of Public Safety (the "department") received a request for gang unit records pertaining to a named individual, as well as any police records involving the individual. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2013-18090 (2013). In that ruling, we concluded the department must withhold the information at issue under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. You inform us the law, facts, or circumstances on which Open Records Letter

No. 2013-18090 was based have not changed. Accordingly, with regard to the requested information that is identical to the information previously requested and ruled upon by this office in the prior ruling, we conclude the department must continue to rely on Open Records Letter No. 2013-18090 as a previous determination and withhold the previously ruled upon information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). To the extent the information at issue is not encompassed by the previous ruling, we will address your arguments against its release.

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. 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.

Crim. Proc. Code art. 61.03(a). Chapter 61 requires a criminal justice agency to compile criminal information into an intelligence database for the purpose of investigating or prosecuting the criminal activities of criminal combinations or criminal street gangs. *See id.* art. 61.02(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 is included in and maintained as part of an intelligence database and as prescribed by chapter 61 of the Code of Criminal Procedure. We have no indication the requestor is entitled to obtain the information under article 61.03.

We note the requestor states he represents the named individual and is requesting the records as authorized by article 61.075 of the Code of Criminal Procedure for the named individual. Article 61.075(a) provides:

A person or the parent or guardian of a child may request a law enforcement agency to determine whether the agency has collected or is maintaining,

under criteria established under Article 61.02(c), criminal information relating solely to the person or child. The law enforcement agency shall respond to the request not later than the 10th business day after the date the agency receives the request.

Id. art. 61.075. Article 61.075 states a person or parent or guardian of a child may request that a law enforcement agency determine *whether* an individual is included in an intelligence database; however, the statute does not provide access to the information collected by an agency pursuant to article 61.02(c). Statutory construction should focus initially “‘on the literal text of the statute in question’ because ‘the text of the statute is the law.’” *Getts v. State*, 155 S.W.3d 153, 155 (Tex. Crim. App. 2005); *Boykin v. State*, 818 S.W.2d 782, 785 (Tex. Crim. App. 1991); Attorney General Opinion GA-0354 at 2 (2005). Like the courts, this office must ascertain and give effect to the intent of the Legislature. Attorney General Opinion No. GA-0669 (2008) (citing *City of Rockwall v. Hughes*, 246 S.W.3d 621, 625-26 (Tex. 2008)). The bill analysis of the House Committee on Criminal Jurisprudence for article 61.075 states the intent of this statute is to allow individuals to discover whether information about them was included in a database and address fears about secret government lists. HOUSE COMMITTEE ON CRIMINAL JURISPRUDENCE, BILL ANALYSIS, Tex. H.B. 1658, 80th Leg., R.S. (2007). That analysis states article 61.075 provides a right to inquire about the existence of criminal information in a database. *Id.* Upon review, we find article 61.075 gives a person the right to determine if information about that person is included in an intelligence database. However, article 61.075 does not create a right of access to the documents or information providing the basis for an individual’s inclusion in an intelligence database under article 61.02. Accordingly, the department must inform the requestor whether the department has collected or is maintaining, under article 61.02(c), criminal information relating solely to the requestor’s client. However, because article 61.075 does not create a right of access to the requested information for the requestor or his client, the department is not required to release such information under article 61.075. Thus, the submitted information must be withheld in its entirety under section 552.101 of the Government Code in conjunction with article 61.03 of the Code of Criminal Procedure.

In summary, the department must continue to rely on Open Records Letter No. 2013-18090 as a previous determination and withhold the previously ruled upon information in accordance with that ruling. 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.

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, 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,

A handwritten signature in cursive script that reads "Britni Fabian".

Britni Fabian
Assistant Attorney General
Open Records Division

BF/bhf

Ref: ID# 579458

Enc. Submitted documents

c: Requestor
(w/o enclosures)