



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 22, 2017

Mr. Matthew Grove  
Assistant County Attorney  
Fort Bend County  
401 Jackson Street, 3rd Floor  
Richmond, Texas 77469

OR2017-21793

Dear Mr. Grove:

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# 676817.

The Fort Bend Sheriff's Office (the "sheriff's office") received a request for information related to the arrest of the requestor. You state you have released some information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the

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<sup>1</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

submitted information relates to an active investigation, and release of that information would interfere with the investigation and prosecution of the case. Based upon this representation, we conclude the release of the submitted information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the submitted information.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-187; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, which must be released, the sheriff’s office may withhold the submitted information under section 552.108(a)(1) of the Government Code.<sup>2</sup>

You seek to withhold gang related intelligence information from the basic information under section 552.101 of the Government Code in conjunction with chapter 61 of the Code of Criminal Procedure. 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. This section encompasses information protected by 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

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

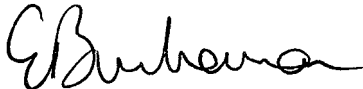
misdemeanor. *See id.* art. 61.05(b). The sheriff's office asserts the basic information is confidential under article 61.03. However, upon review, we find the sheriff's office has failed to demonstrate the information at issue was obtained from an intelligence database as prescribed by chapter 61 of the Code of Criminal Procedure. Accordingly, the sheriff's office may not withhold the basic information under section 552.101 of the Government Code in conjunction with article 61.03 of the Code of Criminal Procedure.

In summary, with the exception of basic information, which must be released, the sheriff's office may withhold the submitted information under section 552.108(a)(1) of the Government Code.

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,



Emily Buchanan  
Attorney  
Open Records Division

EB/eb

Ref: ID# 676817

Enc. Submitted documents

c: Requestor  
(w/o enclosures)