



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 6, 2019

Mr. Ryan S. Henry  
Counsel for the City of Windcrest  
Law Offices of Ryan Henry, PLLC  
1380 Pantheon Way, Suite 110  
San Antonio, Texas 78232

OR2019-11966

Dear Mr. Henry:

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# 763670.

The City of Windcrest (the "city"), which you represent, received a request for information pertaining to certain activists during a specified time period.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.1175, 552.130, 552.137, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we must address the requestor's assertion that the city did not comply with section 552.301 of the Government Code in requesting this ruling. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state

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<sup>1</sup>You state the city sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing 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) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

the exceptions that apply within ten business days of receiving the written request for information. *See id.* § 552.301(b). Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). You inform us the city received the initial request for information on February 8, 2019. On February 21, 2019, the city sought clarification of the request. *See id.* § 552.222(b) (governmental body may communicate with requestor for purposes of clarifying or narrowing request). The requestor responded to the request for clarification on February 22, 2019.

In this instance, however, the requestor contends the city did not act in good faith in seeking clarification of the request. Whether the city acted in good faith in requesting clarification is a question of fact. This office cannot resolve factual issues in the decisional process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Where fact issues cannot be resolved as a matter of law, we must rely on the facts alleged to us by the governmental body that is requesting our decision or on those facts that are discernible from the documents submitted for our inspection. *See* ORD 552 at 4. Having considered the city's representations and documentation, we cannot conclude the city failed to act in good faith in requesting clarification. Accordingly, the request was received on February 22, 2019. Thus, the city's ten- and fifteen-business-day deadlines were March 8, 2019, and March 15, 2019, respectively. *See City of Dallas v. Abbott*, 304 S. W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed). The envelopes in which the city provided the information required by sections 552.301(b) and (e) were postmarked February 28, 2019, and March 13, 2019, respectively. *See* Gov't Code § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Therefore, we find the city complied with the procedural requirements of section 552.301 of the Government Code in requesting this ruling.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses information made confidential by other statutes. Part 23 of title 28 of the Code of Federal Regulations was established to regulate intelligence databases pertaining to certain criminal activities that involve a large number of participants over a broad geographical area. *See* 28 C.F.R. § 23.2 (background of part 23). The policy standards of part 23 are applicable to all criminal intelligence systems operating through support under the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3711,

*et seq. Id.* § 23.3(a). For purposes of part 23, a criminal intelligence system “means the arrangements, equipment, facilities, and procedures used for the receipt, storage, interagency exchange or dissemination, and analysis of criminal intelligence information,” and an intelligence project “means the organizational unit which operates an intelligence system on behalf of and for the benefit of a single agency or the organization which operates an interjurisdictional intelligence system on behalf of a group of participating agencies[.]” *Id.* § 23.3(b)(1), (5).

The release of information within these criminal intelligence databases is governed by section 23.20 of part 23, which provides, in relevant part, the following:

(e) A project or authorized recipient shall disseminate criminal intelligence information only where there is a need to know and a right to know the information in the performance of a law enforcement activity.

(f)(1) Except as noted in paragraph (f)(2) of this section, a project shall disseminate criminal intelligence information only to law enforcement authorities who shall agree to follow procedures regarding information receipt, maintenance, security, and dissemination which are consistent with these principles.

(2) Paragraph (f)(1) of this section shall not limit the dissemination of an assessment of criminal intelligence information to a government official or to any other individual, when necessary, to avoid imminent danger to life or property.

*Id.* § 23.20(e), (f). For purposes of section 23.20, “criminal intelligence information” means “data which has been evaluated to determine that it: (i) [i]s relevant to the identification of and the criminal activity engaged in by an individual who or organization which is reasonably suspected of involvement in criminal activity, and (ii) [m]eets criminal intelligence system submission criteria[.]” *Id.* § 23.3(b)(3). You inform us the submitted information was generated and is maintained by a criminal intelligence system operated pursuant to part 23 of title 28 of the Code of Federal Regulations. You state the information at issue consists of criminal intelligence information that is developed and maintained by a designated fusion center and distributed to law enforcement agencies, including the city’s police department, within the fusion network. Based on your representations and our review of the information at issue, we agree the submitted information constitutes criminal intelligence information subject to section 23.20. Thus, this information may be released only in accordance with that section. You state the requestor is not a member of a law enforcement authority. *See id.* § 23.20(f)(1). In addition, you state the requestor does not have a right to know the information at issue for purposes of section 23.20(e), and that the city does not believe the release of the information is necessary to avoid imminent danger to life or property. *Id.* § 23.20(f)(2). Therefore, we conclude the city must withhold the

submitted information under section 552.101 of the Government Code in conjunction with section 23.20 of title 28 of the Code of Federal Regulations.<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,



Kieran Hillis  
Assistant Attorney General  
Open Records Division

KH/be

Ref: ID# 763670

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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