



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 26, 2019

Ms. Cary Grace  
Assistant City Attorney  
City of Austin  
P.O. Box 1088  
Austin, Texas 78767-1088

OR2019-23810

Dear Ms. Grace:

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# 782582 (Ref. No. R018063).

The Austin Police Department (the "department") received a request for information pertaining to a specified database and information pertaining to individuals within the database. You state the department does not have information responsive to a portion of the request.<sup>1</sup> You state the department will release some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>2</sup> We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>3</sup>

---

<sup>1</sup> The Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by the governmental body or on its behalf. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</sup> We note, and you acknowledge, the department did not comply with the procedural requirements of section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b). Nonetheless, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

<sup>3</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.

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 chapter 67 of the Code of Criminal Procedure, which addresses intelligence information pertaining to street gangs. Article 67.051(a) 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. 67.051(a). Article 67.101(a) provides:

A criminal justice agency may release on request information maintained under this chapter to:

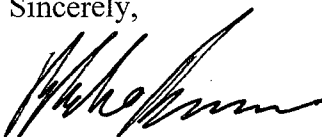
- (1) another criminal justice agency;
- (2) a court; or
- (3) a defendant in a criminal proceeding who is entitled to the discovery of the information under Chapter 39[.]

*Id.* art. 67.101(a). Further, article 67.103 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. 67.103(b). You state the submitted information “is maintained in, and originated from, the criminal gang intelligence database that is prescribed by chapter 67 of the Code of Criminal Procedure.” You also state the requestor is not entitled to obtain the information under article 67.101. Accordingly, we conclude the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with article 67.101 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Blake Brennan  
Assistant Attorney General  
Open Records Division

BBX/mo

Ref: ID# 782582

Enc. Submitted documents

c: Requestor  
(w/o enclosures)