August 24, 2012

Open Records Division
Office of the Attorney General
State of Texas
P.O. Box 12548
Austin, Texas 78711-2548

RE: Public Information Request Received from the ACLU of Texas by the City of Highland Village, Texas on August 3, 2012 (Our File Reference # 56956)

Dear Open Records Division:

The undersigned represents the City of Highland Village, Texas ("City"), and in that capacity submits this letter as a request for an opinion to except from public disclosure certain information held by the City. On August 3, 2012, the City Secretary for the City received a request for information from the American Civil Liberties Union of Texas ("ACLU of Texas" or "Requestor") requesting various information related to the Automated License Plate Reader ("ALPR") systems used by the Highland Village Police Department. Our office previously sent your office the original request with our “ten day” letter dated August 15, 2012. A true and correct copy of the original request is attached hereto as EXHIBIT A.

In accordance with Gov’t Code, § 552.301(b), the City submitted a “ten day” letter to your office stating the exceptions that apply to the requested information. A true and correct copy of the “ten day” letter sent to your office on August 15, 2012 is attached hereto as EXHIBIT B. The Requestor was also forwarded a copy of the letter attached as EXHIBIT B.

In accordance with Texas Government Code, § 552.301(d), the City provided the Requestor with a written statement that the City wishes to withhold part of the requested information and will be asking for a decision from the Attorney General about whether the information is within an exception to public disclosure. A true and correct copy of the notice letter that was sent to the Requestor on August 15, 2012 is attached hereto as EXHIBIT C.

The responsive information includes five hundred and twenty-four (524) pages of information, one hundred and thirty-one (131) pages of which has been burned onto a CD and attached hereto as EXHIBIT D. [Three hundred and ninety-nine (399) pages, which include five (5) pages with some excepted information redacted, will be made available to the Requestor.] Pursuant to Chapter 552 of the Texas Government Code, the City wishes to withhold the responsive information attached hereto as EXHIBIT D that falls within exceptions listed under Subchapter C of Chapter 552 of the TEX. GOV’T CODE, and is requesting a decision from your Office about whether the information falls under the exceptions cited below.
I.

It is the City’s position that the some of the responsive information marked “§552.110-entire page” attached in EXHIBIT D may be exempt from disclosure according to the following law, Section 552.110 of the Government Code, which excepts the disclosure information related to competition or bidding. This section provides as follows:

Texas Government Code §552.110. CERTAIN COMMERCIAL INFORMATION

(a) A trade secret obtained from a person and privileged or confidential by statute or judicial decision is excepted from the requirements of Section 552.021.

(b) Commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained is excepted from the requirements of Section 552.021.

The information marked “§552.110-entire page” in EXHIBIT D contains information that may be considered trade secrets or commercial or financial information that, if released, may cause substantial competitive harm to the City’s vendor that is the subject of the information responsive to this request. This information may also contain proprietary information. In accordance with §552.305(d) of the Texas Government Code, the City has sent a notice to the City’s vendor that a request for information has been made by the Requestor and that this includes the vendor’s information received by the City. A true and correct copy of the letter that was sent to the City’s vendor is attached hereto as EXHIBIT E. In accordance with §552.305(c), the City is not submitting reasons why the information should be withheld or released, as it does not have knowledge and is unable to determine the responsive information that may be considered to be proprietary. The responsibility of determining proprietary information will remain with the third party notified.

II.

It is the City’s position that some of the responsive information marked “§552.108(b)(1)-entire page” attached in EXHIBIT D is exempt from disclosure according to the following law:

Tex. Gov’t Code, Section 552.108: Exception: Certain Law Enforcement and Prosecutorial Information

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law
enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

The information contained on the CD marked “§552.108(b)(1) - entire CD” and attached hereto as EXHIBIT D are internal records being held by a law enforcement agency (the Highland Village Police Department), and release of the information would greatly interfere with current and future law enforcement practices [See Memo from the Highland Village Police Department, attached hereto as EXHIBIT F.] The need to withhold the information pertaining to law enforcement internal practices that deal with the detection, investigation, and/or prosecution of a crime is a compelling reason for nondisclosure of the information. The release of the information would interfere with the current, ongoing investigation and future prosecution of misdemeanor and felony crimes. Therefore, the information attached hereto as EXHIBIT D and marked as “§552.108(b)(1)-Entire Page” should be excepted from disclosure under the statutory exception stated in this reply to the Attorney General.

The Attorney General has held that under the statutory predecessor to §552.108(b), a governmental body may withhold information that would reveal law enforcement techniques or procedures. See, e.g., Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would unduly interfere with law enforcement), 341 (1982) (release of certain information from Department of Public Safety would unduly interfere with law enforcement because release would hamper departmental efforts to detect forgeries of drivers' licenses), 252 (1980) (predecessor to section 552.108 is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crimes may be excepted). The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. See ORD 409 at 2 (construing statutory predecessor).

III.

It is the City’s position that the responsive information marked “§552.108(a)(1)- entire page” attached in EXHIBIT D is exempt from disclosure according to the following law:

Gov't Code, Section 552.108: Exception: Certain Law Enforcement and Prosecutorial Information

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of a crime is excepted from the requirements of Section 552.021 if

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

The information marked “§552.108(a)(1)- entire page” is information being held by a law
enforcement agency regarding an open, pending criminal investigation or prosecution. [See memorandum from the police department, attached hereto as EXHIBIT C.] The need to withhold the information pertaining to an open, active, and pending case in order to deal with the detection, investigation, and/or prosecution of a crime is a compelling reason for nondisclosure of the information. The release of the information would interfere with the current and future investigations of ongoing crimes, such as “bail jumping” and car theft. Therefore, the information attached hereto as EXHIBIT B and marked as “§552.108(a)(1)- entire page” should be excepted from disclosure under the statutory exception stated in this reply to the Attorney General.

IV.

It is the City’s position that the responsive information marked “§552.101 + Chapter 411, Subchapter F” attached in EXHIBIT D is exempt from disclosure pursuant to §552.101 and Chapter 411, Subchapter F of the TEXAS GOVERNMENT CODE. §552.101 of the Texas Government Code encompasses criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Id. §411.083 of the Government Code deems confidential CHRI that the Texas Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. See Gov’t Code § 411.083. §§411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. Id. §411.089(b)(1). Other entities specified in Chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by Chapter 411. See generally Id. §§411.090 - .127. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under §552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. See Gov’t Code § 411.082(2)(B) (term CHRI does not include driving record information).

The information marked “§552.101 + Chapter 411, Subchapter F” in EXHIBIT D includes the City’s access user ID and directions to log into the Texas Crime Information Center system to obtain CHRI. Release of this information to the public would give access to CHRI and the TCIC system to individuals who are not authorized to obtain such information under Chapter 411 of the Government Code. Therefore, the information attached hereto as EXHIBIT D and marked as “§552.101 + Chapter 411, Subchapter F” should be excepted from disclosure under the statutory exception stated in this reply to the Attorney General.
V.

It is the City’s position that the responsive information marked “§552.137” attached in EXHIBIT D is exempt from disclosure pursuant to §552.137 of the Government Code, which states as follows:

Gov’t Code, Section 552.137: Exception: Confidentiality of Certain Email Addresses

(a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

(c) Subsection (a) does not apply to an e-mail address:

(1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;

(2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;

(3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or

(4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.

(d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

The email addresses marked as “§552.137” in EXHIBIT D are not institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. The owners of the e-mail addresses you have marked have not consented to the release of their information. Therefore, the city requests that the email addresses attached hereto as EXHIBIT D and marked as “§552.137” should be excepted from disclosure under the statutory exception stated above.
VI.

The Requestor is being copied on this letter notifying him of this City's intent to seek this ruling from your office. A copy of the letter sent to the Requestor is attached hereto as EXHIBIT G.

Thank you for your attention in this matter. If you have any questions, please feel free to contact us at your convenience.

Very truly yours,

NICHOLS, JACKSON, DILLARD,
HAGER & SMITH, LLP

By:  

[Digital Signature]
Julie V. Pandya

Enclosures

cc:  ACLU of Texas (w/o enclosures)  
Attn: Daniel Collins  
P.O. Box 12905  
Austin, Texas 78711-2905

Diane Callahan, City Secretary (w/o encls)

Ed O’Bara, Highland Village Police Department (w/o encls)