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September 26, 2007

Via CM-RRR No. 7160 3901 9845 1629 2627

Texas Attorney General
Open Records Division
209 W. 14th Street, 6th Floor
Austin, Texas 78701

Re: Requests for information from the City of Pasadena, Texas by Robert Crowe on September 12, 2007.

Dear Sir:

I represent the City of Pasadena (City), Texas. On July 21, 2007 at approximately 2 a.m., Pedro Gonzales, Jr. ("Gonzales") was reportedly discovered in the bed of a truck parked outside a business that was not then open to the public. Gonzales was arrested by officers of the City of Pasadena police department after Gonzales reportedly resisted the investigating officers' attempts to conduct an investigation of Gonzales' suspicious behavior. Gonzales subsequently died while still in the City of Pasadena lockup. The Federal Bureau of Investigation, the Harris County District Attorney's Office and the City of Pasadena (City) are all conducting investigations in these events, which have received significant media coverage.

The City has received numerous requests for information from Robert Crowe ("Crowe"), a reporter with the *Houston Chronicle* newspaper. The City has sent many letters to your office seeking determinations whether information responsive to his previous requests are excluded from public disclosure pursuant to the relevant provisions of the Texas Public Information Act.

Subsequently, on September 12, 2007, the City received the following additional requests from Crowe:

31. Request for photographs of the restraining chair the Pasadena Police Department uses inside its jail; and answers to questions regarding the identification of the name, make and model of the restraining chair the Pasadena Police Department uses inside its jail. (*Exhibit A*).

32. Request for answers to questions regarding the names of officers who arrested Pedro Gonzales, Jr. on July 20, 2007; the time and location of his Gonzales' arrest; and explanation of probable cause supporting his arrest. (Exhibit B).
33. Request for answers to questions of whether Pedro Gonzales was placed in a restraint chair in the Pasadena jail between July 18 and July 21; if he was restrained if placed in a restraint chair; and how long he was restrained, if he was? (*Exhibit C*).

The City seeks a determination from your office as to whether information responsive to these request numbers 31-33 from Crowe are excluded from public disclosure pursuant to the relevant provisions of the Texas Public Information Act.

Crowes' request numbers 31-33 essentially contain the equivalent to legal interrogatories and the Act does not require a governmental body to prepare answers to questions or to do research. *See Open records Decision* Nos. 563 at 8; 555 at 1-2 (1990). Also, it is well-established that the Act does not require a governmental body to prepare new information in response to a written request. *Open Records Decision* No. 342 (1982). Nor is a governmental body required to prepare information in the form requested by a member of the public. *Open Records Decision* No. 145 (1976); *see also Open Records Decision* No. 347 (1982). A governmental body is simply not required to answer factual questions or to, in effect, respond to legal interrogatories. *Open Records Decision* No. 347. The Act applies only to information already transcribed into tangible form. *Open Records Decision* No. 4252 at 1 (2002).

As such, Crowe's request for answers to questions propounded in request numbers 31-33 must be denied.

The City has, or will consistent with the requirements of the Texas Public Information Act, enclose documents in its possession responsive to request numbers 31-33 for your determination.

Records responsive to Crowes' request numbers 31-33 are also excepted from public disclosure pursuant to the provisions of TEX.GOV'T CODE § 552.108, commonly referred to as the "law enforcement" or "investigative exception." Information relating to a pending criminal investigation or prosecution is specifically excepted under subsections (a)(1) and (b)(1) and (2) of § 552.108 because release of such information presumptively would interfere with the detection, investigation or prosecution of crime. *See Open Records Decision* No. 628 at 6-8 (1994).

The circumstances of Gonzalez's death, detention and incarceration involve a pending criminal investigation conducted by state and federal law enforcement officials. As such, documents responsive to Crowe's request number 26 is excepted from public disclosure pursuant to the provisions of TEX.GOV'T CODE § 552.108.

Moreover, Crowe's request for photographs of the restraint chair the police department uses in its jail or authorization for a newspaper photographer to create such photographs is not permitted under the Texas Public Information Act. TEX.GOV'T CODE § 552.108 provides in pertinent part that an internal record of a law enforcement agency maintained for internal use in matters relating to law enforcement or prosecution is excepted from public disclosure when the release of such record would interfere with law enforcement or prosecution. "Section 552.108(b)(1) is intended to protect 'information which, if released, would permit private citizens to anticipate weaknesses in [a law enforcement agency], avoid detection, jeopardize officer safety, and generally undermine [law enforcement] efforts to effectuate the laws of this State.'" TEX. ATTY. GEN. OPP. OR2007-10414, 2007 WL 2403841 (TEX.A.G. 2007) (quoting *City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex.App.--Austin 2002, no pet.).

Release of information regarding the type of restraint chair the police department utilizes and the manner of its use pertains to internal records of a law enforcement agency maintained for internal use in matters relating to law enforcement or prosecution and is excepted from public disclosure because the release of such records would interfere with law enforcement or prosecution. See *id.* The information Crowe seeks is not generally known by the public, involves specific operational information regarding specific equipment for use in a jail setting to maintain the safety and security of the Pasadena City Jail. The release of such information would impair the jail staff's ability to maintain a safe environment. See *id.*

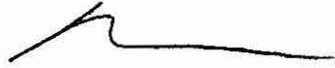
Furthermore, request numbers 31-33 are also excluded from public disclosure pursuant to § 552.103(a) of the Act, commonly referred to as the "Litigation Exception." Section 552.103(a) provides that information related to litigation or anticipated litigation is protected from disclosure.

Specifically, this exception enables a governmental body to protect its position in litigation and precludes a party involved in litigation from using the Act as a method of avoiding the rules of discovery used in litigation. *Open Records Decision No. 551* at 3 (1990). Not only has there been broad reaching, sensationalized and inaccurate media coverage of these events, the City has also received notice from attorney Clyde J. Jackson, III on August 15, 2007, advising the City that his law firm will pursue any and all claims resulting from the arrest and subsequent death of Gonzales. Jackson has likewise filed a petition for authorization to take depositions in anticipation of asserting claims based upon the circumstances of this occurrence. The City, thus, reasonably anticipates litigation to ensue on this matter and therefore Crowe's request numbers 31-33 are excluded from disclosure.

In light of these exceptions, the City respectfully requests that the Attorney General render a decision those items responsive to Mr. Crowe's request numbers 31-33 are prohibited from public disclosure.

By copy of this letter, the City has notified Mr. Crowe that the City seeks to withhold the requested information and has requested a decision from the Attorney General of Texas.

Sincerely,

A handwritten signature in black ink, appearing to read "Norman Ray Giles". The signature is fluid and cursive, with a prominent initial "N" and a long horizontal stroke extending to the right.

Norman Ray Giles

NRG:tmh

Enclosures

0646683.01

003856-000178

cc: *(w/out enclosures)*

Robert Crowe

Houston Chronicle

801 Texas Avenue

Houston, Texas 77002