



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 31, 2008

Mr. Matthew D. de Ferranti  
Assistant City Attorney  
City of West Lake Hills  
Bovey & Bojorquez, L.L.P.  
12325 Hymeadow Drive, Suite 2-100  
Austin, Texas 78750

OR2008-01468

Dear Mr. de Ferranti:

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# 301346.

The City of Westlake Hills (the "city"), which you represent, received a request for information pertaining to the city's mayor and five named city council members for the time period of March 1, 2007 through October 31, 2007. You state you will provide the requestor with some of the requested information. However, you claim that the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

You assert that the information at issue is excepted under section 552.108 of the Government Code as interpreted by *Holmes v. Morales*. See *Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). In *Holmes*, the Texas Supreme Court held that the plain language of section 552.108 did not require a governmental body to show that release of the information would unduly interfere with law enforcement. *Id.* at 925. Subsequent to the interpretation of section 552.108 in *Holmes*, the Seventy-fifth Legislature amended section 552.108

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<sup>1</sup> We note that although you initially raised sections 552.101 and 552.107 of the Government Code, you make no arguments to support these exceptions. Therefore, we assume you have withdrawn your claim that these sections apply to the submitted information. Gov't Code §552.301, .302.

extensively. See Act of June 1, 1997, 75th Leg., R.S., ch. 1231, § 1, 1997 Tex. Gen. Laws 4697. As amended, section 552.108 now expressly requires a governmental body to explain, among other things, how release of the information would interfere with law enforcement.

Section 552.108 of the Government Code now reads as follows, in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

- (1) release of the information would interfere with the detection, investigation or prosecution of crime;
- (2) it is information that deals with the detection, investigation or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. See Gov't Code §§ 552.108(a)(1), (a)(2), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that Exhibits C and D relate to a pending criminal investigation. Thus, based on your representations and our review, we determine that the release of Exhibits C and D would interfere with the detection, investigation, or prosecution of crime. We, therefore, agree that section 552.108(a)(1) is applicable to these Exhibits. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

You state that Exhibit B pertains to two cases that concluded in a final result other than conviction or deferred adjudication. We therefore agree that section 552.108(a)(2) applies to Exhibit B.

We note that basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. See Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the city may withhold the

submitted information pursuant to section 552.108 of the Government Code.<sup>2</sup> We note that you have the discretion to release all or part of the information that is not otherwise confidential by law. Gov't Code § 552.007.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

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<sup>2</sup> As our ruling is dispositive, we need not address your remaining argument against disclosure except to note that basic information held to be public in *Houston Chronicle* is not excepted from disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

*C. Chantaplin - McLelland*

Chanita Chantaplin-McLelland  
Assistant Attorney General  
Open Records Division

CC/mcf

Ref: ID# 301346

Enc. Submitted documents

cc: Mr. Christopher Yurkanan  
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(w/o enclosures)