



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 25, 2014

Ms. Elizabeth Elleson  
Counsel for the City of West Lake Hills  
Bojorquez Law Firm, PLLC  
12325 Hymeadow Drive, Suite 2-100  
Austin, Texas 78750

OR2014-21454

Dear Ms. Elleson:

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# 544807.

The City of West Lake Hills (the "city"), which you represent, received two requests for information pertaining to a specified investigation. You claim the submitted information is excepted from disclosure under sections 552.107, 552.108, and 552.111 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, we must address the city's obligations under section 552.301 of the Government Code, which prescribes the procedural obligations that a governmental body must follow in

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<sup>1</sup>Although you also raise sections 552.101 and 552.103 of the Government Code, you have not provided any argument to support these exceptions. Therefore, we do not address section 552.101 or section 552.103. *See* Gov't Code §§ 552.301(e)(1)(A), .302. Additionally, we note this office has concluded section 552.101 does not encompass other exceptions found in the Act. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

<sup>2</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 that those records contain substantially different types of information than that submitted to this office.

asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires that a governmental body ask for a decision from this office and state which exceptions apply to the requested information by the tenth business day after receiving the request. Gov't Code § 552.301(b). We note you did not raise section 552.107 of the Government Code by the tenth business day after receiving the first request for information. Thus, the city failed to comply with the requirements mandated by subsection 552.301(b) as to its claims under section 552.107 of the Government Code. Generally, if a governmental body fails to timely raise an exception or a privilege, that exception or privilege is waived. *See generally id.* § 552.302; Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Section 552.107 is a discretionary exception to disclosure and may be waived. *See Gov't Code* § 552.007; Open Records Decision Nos. 676 at 6, 665 at 2 n.5 (2000) (discretionary exceptions in general). Therefore, in failing to comply with section 552.301 of the Government Code, the city has waived its arguments under section 552.107 of the Government Code for the information responsive to the first request for information and may not withhold any of the information responsive to the first request for information on this basis. However, we will consider the city's timely-raised arguments for this information. Additionally, we will consider the city's arguments under section 552.107 of the Government Code for the information not responsive to the first request for information.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov't Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 may be invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See* Open Records Decision No. 474 at 4-5 (1987). Where a non-law enforcement agency has custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration that the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld.

You state, and provide documentation demonstrating, the Travis County District Attorney's Office (the “district attorney's office) objects to disclosure of the submitted information because its release would interfere with an ongoing criminal investigation by the district attorney's office's Public Integrity Unit. Based on these representations, we conclude release of the submitted information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

Therefore, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office.<sup>3</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,



Megan G. Holloway  
Assistant Attorney General  
Open Records Division

MGH/cbz

Ref: ID# 544807

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>As our ruling is dispositive for this information, we need not address your remaining arguments against disclosure.