



April 30, 2002

Mr. Loren B. Smith
Olson & Olson
333 Clay Street, Suite 3485
Houston, Texas 77002

OR2002-1727A

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 160896. This office issued Open Records Letter No. 2002-1727 (2002) to the City of Friendswood (the "city") on April 8, 2002. However, that ruling was incorrect. Where this office determines that an error was made in the decision process under sections 552.301 and 552.306, and that error resulted in an incorrect decision, we will correct the previously issued ruling. *See generally* Gov't Code § 552.011 (providing that the Office of Attorney General may issue a decision to maintain uniformity in application, operation, and interpretation of this chapter). Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on April 8, 2002.

The city, which you represent, received a request for documents "related to . . . the recent Police Chief opening, search, interviewing, and hiring . . . [including] . . . any document . . . provided to, received from, or created by the City Attorney." You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Although this office at one time applied the attorney-client privilege under the statutory predecessor to section 552.101, we today believe that the privilege is properly asserted in the context of the Act only under section 552.107(1). *See* Open Records Decision No. 575 at 2 (1990) (section 552.101 does not encompass discovery privileges).

Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney

or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. *Id.* at 5. We agree that a portion of the submitted information reflects either confidential communications from the client to an attorney or an attorney's legal advice or opinions that the city may withhold under section 552.107. We have marked the information that is excepted from disclosure under section 552.107 and may be withheld.

The submitted information also contains e-mail addresses obtained from the public. An e-mail address may be confidential under section 552.137, which provides in relevant part:

- (a) 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.

Gov't Code § 552.137. The city must withhold the e-mail addresses of members of the public under section 552.137 unless the individual who submitted a particular e-mail address has affirmatively consented to its release. Thus, the e-mail address of the private attorney is excepted from disclosure under section 552.137.

In summary, we have marked the information that is excepted from disclosure under section 552.107 and may be withheld. The city must withhold the e-mail addresses of members of the public under section 552.137 unless the individual who submitted a particular e-mail address has affirmatively consented to its release. Open Records Letter No. 2002-1727 is overruled to the extent it conflicts with this current ruling. In the future, please inform this office during the rulings process of the applicability of an exception. *See* Gov't Code § 552.301(b) (governmental body must ask for attorney general's decision and state exceptions that apply).

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 appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, 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, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public 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 Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/seg

Ref: ID# 160896

c: Mr. Jeff Branscome
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