ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 31, 2007

Ms. Allison Holland
Olson & Olson, L.L.P.
For the City of Friendswood
Wortham Tower, Suite 600
2727 Allen Parkway
Houston, Texas 77019

OR2007-01188

Dear Ms. Holland:

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# 270640.

The City of Friendswood (the "city"), which you represent, received a request for "Cause No. H 05-2627 vs City of Friendswood US Dist Court, So Dist of Texas, Galv Div." You claim that the requested information is excepted from disclosure under section 552.107[1] of the Government Code.[2] We have considered the exception you claim.

First, the city states it does not possess the file for this case. Rather, the city states the file is available at the federal courthouse and it need not dispatch personnel to the courthouse. A governmental body is not required to obtain information not in its possession. Open Records Decision No. 558 (1990). However, the city then proceeds to indicate that it may have information responsive to the request by stating that the request includes

[1]Although you raise section 552.101 of the Government Code for the attorney-client privilege, section 552.107 is the correct exception to raise.

[2]You initially raise sections 552.101, 552.102, 552.103, 552.108, 552.111, 552.117, 552.1175, 552.119, and 552.147 of the Government Code as exceptions to disclosure for the requested information; however, you do not provide any arguments explaining why these exceptions apply.

correspondence between the city and its attorneys that is excepted from disclosure by the attorney-client privilege. If the city does have information responsive to the request, the city failed to comply with section 552.301(e) which requires a governmental body to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld and (2) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. While you have stated the exception that you believe is applicable to the requested information, you have failed to submit to this office a copy of the specific information requested or representative samples and the city's arguments. Thus, the city has failed to comply with the procedural requirements mandated by section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Section 552.107 of the Government Code is a discretionary exception which protects the governmental body's interest and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under Gov't Code § 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Thus, section 552.107 does not provide a compelling reason for non-disclosure under section 552.302, and the city may not withhold any of the requested information under this exception. Accordingly, the city must release the requested information that it maintains to the requestor.

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).

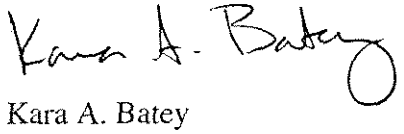
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 appeal 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.

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,



Kara A. Batey
Assistant Attorney General
Open Records Division

KAB/krl

Ref: ID# 270640

c: Mr. Daniel G. Illerich
2876 Love Lane
Friendswood, Texas 77546
(w/o enclosures)