



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 20, 2008

Mr. Loren B. Smith
Olson & Olson, L.L.P.
Wortham Tower, Suite 600
2727 Allen Parkway
Houston, Texas 77019

OR2008-11473

Dear Mr. Smith:

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# 319445.

The City of Texas City (the "city"), which you represent, received a request for all e-mails of nine named individuals during a specified time period. You state that you have released some of the requested information. You assert that a portion of the submitted information is not subject to the Act. You claim that the remaining submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.108, 552.111, 552.137, and 552.139 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹ We have also considered comments submitted by a representative of the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

We first note that portions of the submitted information, which we have marked, are not responsive to the instant request because they were created after the date the request was received. The city need not release non-responsive information in response to this request and this ruling will not address that information.

Next, we note that the requestor contends that he was not properly notified of the city's request for a ruling from this office as required by section 552.301(d)(2) of the Government

¹We assume that 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.

Code. *See id.* § 552.301(d) (governmental body must provide requestor with copy of governmental body's written communication to attorney general asking for decision). Pursuant to section 552.302, a governmental body's failure to timely provide the requestor with a copy of its written communication to this office results in the presumption that the information is public. The city states that it received the written request for information on June 2, 2008. The city requested a decision from our office on June 16, 2008. Further, the submitted information indicates the city simultaneously sent a copy of the request for a decision to the requestor. This office is unable to resolve disputes of fact in the open records ruling process. Accordingly, we must rely upon the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernable from the documents submitted for our inspection. *See* Open Records Decision No. 522 at 4 (1990). Based on the submitted information and the city's representations, we find that the city complied with the procedural requirements of section 552.301 in requesting this ruling. Accordingly, we will address the city's arguments against disclosure.

Next, we note that you have redacted portions of the submitted information. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. Gov't Code §§ 552.301(a), .301(e)(1)(D). We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. However, you do not assert, nor does our review of our records indicate, that you have been authorized to withhold any of the remaining redacted information without seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision 673 (2000). As such, these types of information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of the redacted information; thus, being deprived of that information does not inhibit our ability to make a ruling. In the future, however, the city should refrain from redacting any information that it submits to this office in seeking an open records ruling. Failure to submit the required information in a legible form generally results in the legal presumption that the information is public and must be released. *See* Gov't Code § 552.302.

We next address the city's assertion that the e-mails within Exhibit I are not subject to the Act. The Act is only applicable to "public information." *See id.* § 552.021. Section 552.002(a) defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." *Id.* § 552.002(a).

You state that the information in Exhibit I was not collected, assembled, or maintained in connection with the transaction of any official business of the city. You indicate that the documents in Exhibit I are simply an incidental use of e-mail by city employees and pertain

only to personal matters. Based on your arguments and our review of the documents at issue, we agree that most of the e-mails do not constitute "public information" that are subject to the Act. *See id.* § 552.021; *see also* Open Records Decision No. 635 (1995) (statutory predecessor not applicable to personal information unrelated to official business and created or maintained by state employee involving *de minimis* use of state resources). Accordingly, this information, which we have marked, need not be released in response to the request.² However, we find that you have failed to demonstrate how the remaining e-mails within Exhibit I are purely personal in nature. We therefore conclude that this information is subject to the Act and must be released, unless it falls within the scope of an exception to disclosure. *See* Gov't Code §§ 552.002(a)(1), .021.

We now address your exceptions to disclosure of the submitted information. The city asserts that the information in Exhibit B must be withheld under section 552.101 of the Government Code, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses information made confidential by statute, such as section 58.005 of the Family Code. Section 58.005 provides that "[i]nformation obtained for the purpose of diagnosis, examination, evaluation, or treatment or for making a referral for treatment of a child by a public or private agency or institution providing supervision of a child by arrangement of the juvenile court or having custody of the child under order of the juvenile court may be disclosed only to [certain listed individuals]." Fam. Code § 58.005(a). You do not inform us, and the submitted information at issue does not itself reflect, that any of this information was "obtained for the purpose of diagnosis, examination, evaluation, or treatment or for making a referral for treatment of a child by a public or private agency or institution providing supervision of a child by arrangement of the juvenile court or having custody of the child under order of the juvenile court" *Id.* We therefore conclude that this information is not excepted from disclosure under section 552.101 of the Government Code in conjunction with section 58.005 of the Family Code.

Section 552.101 also encompasses section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. For purposes of section 58.007, "child" means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). Section 58.007(c) reads as follows:

Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Id. § 58.007. You also claim that Exhibit B is confidential under section 58.007 of the Family Code. Upon review, we determine that you have failed to demonstrate that any portion of Exhibit B constitutes a juvenile law enforcement record for the purposes of section 58.007. Accordingly, no portion of the submitted information may be withheld under section 552.101 of the Government Code on this basis.

Section 552.101 also encompasses section 261.201(a) of the Family Code, which provides as follows:

The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Id. § 261.201(a). You claim that the information in Exhibit E is confidential under section 261.201 of the Family Code. Upon review of the submitted information, we find that the information we have marked in Exhibit E, as well as Exhibit A, was used or developed in an investigation of alleged or suspected child abuse. *See id.* § 261.001(1)(E) (definition of child abuse includes sexual assault or aggravated sexual assault under Penal Code sections 22.011 and 22.021); *see also id.* § 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). Thus, we find that the information we have marked is within the scope of section 261.201 of the Family Code. You have not indicated that the city’s police department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, the information we have marked in Exhibit A and Exhibit E is

confidential pursuant to section 261.201 of the Family Code, and must be withheld under section 552.101 of the Government Code.

You assert that the information in Exhibit G is excepted from public disclosure under section 552.101 in conjunction with sections 418.176 through 418.182 of the Government Code. These sections were added to chapter 418 of the Government Code as part of the Texas Homeland Security Act (the "HSA"). The HSA makes specified categories of information confidential, including risk assessments, investigations of terrorism, vulnerabilities of critical infrastructure, and some types of information related to security systems. Gov't Code §§ 418.176-182. However, the fact that information may relate to a governmental body's security concerns or emergency management activities does not make the information *per se* confidential under the HSA. See Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute's key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions of the HSA must adequately explain how the responsive records fall within the scope of the claimed provision. See Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies). In this instance, although you generally assert that the information in Exhibit G is confidential under the HSA, you have not provided any arguments explaining this assertion, nor have you indicated which portions of submitted information you seek to withhold. See *id.* § 301(b)(e). Accordingly, we find that you have failed to demonstrate that the information at issue is confidential under the HSA, and the city may not withhold any of portion of Exhibit G under section 552.101 on that basis.

You claim that the information in Exhibit H is excepted from disclosure under section 552.101 in conjunction with the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 42 U.S.C. §§ 1320d-1320d-8. At the direction of Congress, the Secretary of Health and Human Services ("HHS") promulgated regulations setting privacy standards for medical records, which HHS issued as the Federal Standards for Privacy of Individually Identifiable Health Information. See Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. § 1320d-2 (Supp. IV 1998) (historical & statutory note); Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Pts. 160, 164 ("Privacy Rule"); see also Attorney General Opinion JC-0508 at 2 (2002). These standards govern the releasability of protected health information by a covered entity. See 45 C.F.R. pts. 160, 164. Under these standards, a covered entity may not use or disclose protected health information, excepted as provided by parts 160 and 164 of the Code of Federal Regulations. See *id.* § 164.502(a). This office has addressed the interplay of the Privacy Rule and the Act. In Open Records Decision No. 681 (2004), we noted that section 164.512 of title 45 of the Code of Federal Regulations provides that a covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law. See 45 C.F.R. § 164.512(a)(1). We further noted that the Act "is a mandate in Texas law that compels Texas governmental bodies to disclose information to the public." See ORD 681 at 8; see also Gov't Code §§ 552.002, .003, .021. We therefore

held that the disclosures under the Act come within section 164.512(a). Consequently, the Privacy Rule does not make information confidential for the purpose of section 552.101 of the Government Code. See *Abbott v. Tex. Dep't of Mental Health & Mental Retardation*, 212 S.W.3d 648 (Tex. App.—Austin 2006, no pet.); ORD 681 at 9; see also Open Records Decision No. 478 (1987) (as general rule, statutory confidentiality requires express language making information confidential). Thus, because the Privacy Rule does not make confidential information that is subject to disclosure under the Act, the city may withhold protected health information from the public only if the information is confidential under other law or an exception in subchapter C of the Act applies.

Section 552.101 of the Government Code also encompasses common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found that the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, see Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), 545 (1990); and personal financial information not relating to a financial transaction between an individual and a governmental body, See Open Records Decision Nos. 545, 523 (1989) (individuals' mortgage payments, assets, bills, and credit history). We have marked information that is confidential under common-law privacy. Accordingly, the marked information must be withheld under section 552.101 of the Government Code. However, we find that no portion of the remaining information at issue is highly intimate or embarrassing and of no legitimate concern to the public.

You claim that the submitted e-mails in Exhibit A are excepted from public disclosure under section 552.108(a)(1) of the Government Code. Section 552.108 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). 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 *id.* §§ 552.108(a)(1), 301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the information at issue pertains to pending criminal investigations and prosecutions. Based upon your representations, we conclude that the release of a portion of the remaining information in Exhibit A 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), *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). Accordingly, the city may withhold the information we have marked

under section 552.108(a)(1). However, the city has failed to demonstrate how any portion of the remaining information at issue pertains to the ongoing investigations, or how release of this information would interfere with the detection, investigation, or prosecution of crime. Therefore, none of the remaining information in Exhibit A may be withheld on this basis.

You also claim section 552.103 for the remaining information in Exhibit A. Section 552.103 provides in relevant part as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation was pending or reasonably anticipated on the date that the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

You state that the information in Exhibit A relates to a pending criminal litigation proceeding. However, you have failed to demonstrate that the city is a party to any pending litigation, and therefore does not have a litigation interest in the matter for purposes of section 552.103. *See* Gov't Code § 552.103(a); Open Records Decision No. 575 at 2 (1990) (stating that predecessor to section 552.103 only applies when governmental body is party to litigation). Accordingly, you may not withhold any of the remaining information in Exhibit A under section 552.103 of the Government Code.

You raise section 552.107 of the Government Code for the information in Exhibit C. Section 552.107 protects information that comes within the attorney-client privilege. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. *See* Open Records Decision No. 676 at 6-7 (2002). First, a

governmental body must demonstrate that the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made “for the purpose of facilitating the rendition of professional legal services” to the client governmental body. See TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. See *In re Texas Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in capacity other than that of attorney). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. Thus, the mere fact that a communication involves an attorney for the government does not demonstrate this element.

Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. See TEX. R. EVID. 503(b)(1)(A)-(E). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a *confidential* communication, *id.* 503(b)(1), meaning it was “not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.” *Id.* 503(a)(5). Whether a communication meets this definition depends on the *intent* of the parties involved at the time the information was communicated. See *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, no writ). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain that the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. See *Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

In this instance, you have not explained how any of the documents at issue constitute or document communications made “for the purpose of facilitating the rendition of professional legal services” to the city. You have also failed to identify most of the parties to the communications, and you have not explained that the confidentiality of the communications has been maintained. Thus, you have failed to demonstrate how section 552.107 is applicable to the information at issue. Accordingly, the city may not withhold any of the information in Exhibit C under section 552.107 of the Government Code.

You also raise section 552.111 of the Government Code for Exhibit C. Section 552.111 excepts from disclosure “an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.” Gov’t Code § 552.111; *see also* Open Records Decision No. 615 (1993). The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. See *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, no writ); Open Records Decision No. 538 at 1-2 (1990).

In Open Records Decision No. 615, this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ). We determined that section 552.111 excepts from disclosure only those internal communications that consist of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *See* ORD 615 at 5. A governmental body's policymaking functions do not encompass routine internal administrative or personnel matters, and disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. *Id.*; *see also City of Garland v. Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (section 552.111 not applicable to personnel-related communications that did not involve policymaking). A governmental body's policymaking functions do include administrative and personnel matters of broad scope that affect the governmental body's policy mission. *See* Open Records Decision No. 631 at 3 (1995).

Section 552.111 does not protect facts and written observations of facts and events that are severable from advice, opinions, and recommendations. *See* ORD 615 at 5. But if factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make severance of the factual data impractical, the factual information also may be withheld under section 552.111. *See* Open Records Decision No. 313 at 3 (1982).

This office has also concluded that a preliminary draft of a document that is intended for public release in its final form necessarily represents the drafter's advice, opinion, and recommendation with regard to the form and content of the final document, so as to be excepted from disclosure under section 552.111. *See* Open Records Decision No. 559 at 2 (1990) (applying statutory predecessor). Section 552.111 protects factual information in the draft that also will be included in the final version of the document. *See id.* at 2-3. Thus, section 552.111 encompasses the entire contents, including comments, underlining, deletions, and proofreading marks, of a preliminary draft of a policymaking document that will be released to the public in its final form. *See id.* at 2.

You indicate that the information at issue consists of advice, opinions or recommendations concerning a policymaking issues. Upon review, we find that you have failed to explain how the information at issue, which generally involves routine administrative matters and factual information, constitutes advice, recommendations, opinions, or other material reflecting the policymaking processes of the city. Therefore, you may not withhold any portion of Exhibit C under section 552.111.

Section 552.137 provides that "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 [the Act]," unless the owner of the e-mail address has affirmatively consented to its public disclosure. Gov't Code § 552.137(a)-(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137(c). We note that section 552.137(a) does not apply to the e-mail address provided by a person who has a contractual relationship with the governmental body or by

the contractor's agent. *Id.* § 552.137 (c)(1). Likewise, section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. Therefore, the city must withhold any personal e-mail addresses under section 552.137, unless the owner of a particular e-mail address has affirmatively consented to its public disclosure. However, to the extent that any of the personal e-mail addresses belong to employees of entities with which the city has contractual relationships, or fall under any of the other exceptions listed under subsection 552.137(c), the e-mail addresses may not be withheld under section 552.137.

You also claim that a portion of the remaining submitted information is excepted from disclosure under section 552.139 of the Government Code. Section 552.139 provides that information is excepted from required public disclosure "if it is information that relates to computer network security or to the design, operation, or defense of a computer network." *Id.* § 552.139(a). We determine that a portion of the information in Exhibits F and I, which we have marked, is excepted under section 552.139. You have not demonstrated that any of the remaining information relates to computer network security or to the design, operation, or defense of a computer network as contemplated in section 552.139(a). Consequently, none of the remaining information may be withheld under section 552.139 of the Government Code.

We note that portions of the remaining submitted information are subject to sections 552.117 and 552.130 of the Government Code.³ Section 552.117(a)(2) excepts from disclosure the current and former home addresses and telephone numbers, social security numbers, and family member information of a peace officer regardless of whether the officer requested confidentiality under section 552.024 or 552.1175 of the Government Code.⁴ We have marked the information that must be withheld under section 552.117(a)(2).

We note that the remaining information also contains Texas motor vehicle record information. Section 552.130 of the Government Code excepts from disclosure information that "relates to... a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130. The city must withhold the information we have marked under section 552.130 of the Government Code.

In summary, (1) the information that we have marked pursuant to section 552.002 of the Government Code is not subject to the Act; (2) the city must withhold the marked information that is confidential under section 552.101 of the Government Code in

³The Office of the Attorney General will raise mandatory exceptions like section 552.117 and 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

⁴"Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

conjunction with section 261.201 of the Family Code and common-law privacy; (3) the city may withhold the information we have marked under section 552.108(a)(1) of the Government Code; (4) the city must withhold the information we have marked under sections 552.117(a)(2), 552.130, and 552.139 of the Government Code; and (5) to the extent that the e-mail addresses contained in the submitted information are not excluded by subsection (c), they must be withheld under section 552.137 of the Government Code, unless the city receives consent for their release. The remaining responsive information must be released.

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). If the governmental body does not file suit over 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.

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,



Paige Savoie
Assistant Attorney General
Open Records Division

PS/ma

Ref: ID# 319445

Enc. Submitted documents

c: Mr. Chris Hanson
KTRK-TV
c/o Mr. Loren B. Smith
Olson & Olson, L.L.P.
Wortham Tower, Suite 600
2727 Allen Parkway
Houston, Texas 77019
(w/o enclosures)