



March 16, 2000

Ms. Kimberley Mickelson  
Olson & Olson  
Three Allen Center  
333 Clay Street, Suite 3485  
Houston, Texas 77002

OR2000-1065

Dear Ms. Mickelson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 133746.

The City of Friendswood (the “city”), which you represent, received a request for all reports and documentation created by Robert Weiners concerning animal control issues or the requestor or Bea Morris. You claim that portions of the requested information are excepted from disclosure under sections 552.108 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

You assert that section 552.108 excepts from disclosure information on page four of the submitted information. Section 552.108(a)(1) excepts from disclosure information 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. Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why release of the requested information would interfere with law enforcement. *See Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

Although the information does not supply the explanation on its face, you claim that the information involves an internal and on-going investigation and release of this information at this time would interfere with the investigation of a potential crime. However, the information does not indicate that a crime has occurred, but merely reflects that employees have filed grievances with Human Resources. Although you assert that the information relates to a “potential crime,” you have not advised this office of any specific criminal conduct related to the investigation. Section 552.108 does not operate to except from disclosure administrative, non-criminal active investigations. *See Morales v. Ellen*, 840 S.W.2d 519, 526 (Tex. App.—El Paso 1992, writ denied) (statutory predecessor to section

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<sup>1</sup>In your brief, you asked this office to include the file number noted in the brief’s reference line. This letter ruling addresses “File Branscome 1/18/00 #2.”

552.108 did not apply to an investigation of sexual harassment which did not result in criminal investigation). Thus, we conclude that you have not demonstrated how release of the information would interfere with the detection, investigation, or prosecution of crime. Therefore, we find that the information on page four is not excepted from disclosure under section 552.108(a)(1).

You also assert that marked information on pages 1, 4, 6, and 7 is protected from disclosure by section 552.111. Although you assert section 552.111, you argue that the marked information is protected by the attorney-client privilege. Section 552.107(1) excepts information that an attorney of a political subdivision 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. Open Records Decision No. 574 at 5 (1990). A "confidential communication" is a communication "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." Tex. R. Evid. 503(a)(5). When communications from attorney to client do not reveal the client's communications to the attorney, section 552.107 protects them only to the extent that such communications reveal the attorney's legal opinion or advice. *Id.* at 3. In addition, purely factual communications from attorney to client, or between attorneys representing the client, are not protected. *Id.*

You do not indicate, nor is it apparent, that any of the marked information was prepared by or under the direction of an attorney. The marked information on page 1 merely reflects that city employees are seeking the advice of private counsel. Even if we were to assume any of the attorneys represent the city, the information does not reveal the substance of any confidential communications. The marked information on page 4 is merely a communication between city employees, none of whom are indicated to be attorneys. The memorandum on pages 6 and 7 is a communication between a city employee and his private counsel which is indicated to have also been shared with other city employees. Section 552.107(1) excepts information that an attorney of a political subdivision is prohibited from disclosing because of a duty to the client. *See* Gov't Code § 552.107(1) (emphasis added). Thus, section 552.107(1) does not except from disclosure information held by an employee's private counsel. Therefore, we conclude that the marked information on pages 1, 4, 6, and 7 is not excepted from disclosure by the attorney-client privilege encompassed in section 552.107(1).

Having found that sections 552.108 and 552.107(1) do not except the information from disclosure, we conclude that the submitted information must be released 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.

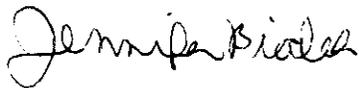
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge 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, 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).

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,



Jennifer Bialek  
Assistant Attorney General  
Open Records Division

JHB/ch

Ref: ID# 133746

Encl. Submitted documents

cc: Mr. Jeff Branscome  
308 Woodstream Circle  
Friendswood, Texas 77546  
(w/o enclosures)