



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

December 12, 2002

Ms. Loren B. Smith
Olson & Olson
Three Allen Center
Suite 3485
333 Clay Street
Houston, Texas 77002

OR2002-7081

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 173593.

The City of Friendswood (the "city"), which you represent, received a request for any documents related to a specified city council member's real estate interests in property which has been considered by the city council for action. You state that most of the responsive information has been made available to the requestor. However, you claim that a portion of the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with the attorney-client privilege, and section 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered the comments submitted to this office by the requestor. *See* Gov't Code § 552.304 (providing for submission of public comments).

Initially, you raise section 552.101 of the Government Code in conjunction with the attorney-client privilege in regard to the information in Exhibit B. This office has held that when the attorney-client privilege is asserted under section 552.101, we consider it an assertion of the more specific section 552.107(1) exception. *See* Open Records Decision No. 676 at 2-3 (2002). Accordingly, we will address your attorney-client privilege argument under section 552.107 of the Government Code.

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney's legal advice and the client's confidences made to the attorney. *See* Open Records Decision No. 574 (1990). Accordingly, these two classes of information are the only information contained in the records at issue

that may be withheld pursuant to the attorney-client privilege. We agree that the submitted information in Exhibit B reflects either an attorney's legal advice or the client's confidences made to the attorney. The city may therefore withhold Exhibit B under section 552.107 of the Government Code.¹

You also assert section 552.137 of the Government Code in regard to Exhibit A. Section 552.137 makes certain e-mail addresses confidential and 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.

Accordingly, unless consent to release has been granted, you must withhold the e-mail addresses you have highlighted, as well as the additional e-mail address we have marked, under section 552.137 of the Government Code.

In summary, we conclude that: 1) you may withhold Exhibit B under section 552.107 of the Government Code; and 2) unless consent to release has been granted, you must withhold the e-mail addresses you have highlighted, as well as the additional e-mail address we have marked, under section 552.137 of the Government Code. All remaining 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 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).

¹As we are able to make this determination, we need not address your section 552.137 argument in regard to Exhibit B.

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,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/lmt

Ref: ID# 173593

Enc: Submitted documents

c: Mr. Jeff Branscome
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(w/o enclosures)