OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

January 14, 2003

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

OR2003-0275

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# 177486.

The City of Friendswood (the "City"), which you represent, received a request for "[a]ll emails either sent or received by Councilman Tracy Goza." You inform us that you either have released or intend to release most of the information responsive to the request; however, you assert that some of the requested information is excepted from disclosure under section 552.137 of the Government Code. We have reviewed the information you submitted and considered the exception you claim.

Initially, we note you did not meet your burden under section 552.301 of the Government Code with respect to the request for information. According to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. Further, pursuant to section 552.301(e), a governmental body must 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, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. In this case, you state the City received the request for information on October 15, 2002. You should have submitted your request for an attorney general opinion no later than October 29, 2002.

The City should have forwarded all other required documentation to this office by November 5, 2002. Your letter, with support documentation, requesting an opinion from this office has a postmark dated December 26, 2002. Therefore, we find that you did not request a ruling from this office or submit the required information within the prescribed periods. Consequently, we conclude the City failed to comply with the requirements of section 552.301 of the Government Code.

According to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Normally, a compelling interest is that some other source of law makes the information confidential or that third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because the application of section 552.137 of the Government Code qualifies as a compelling reason to overcome the presumption of openness, we will address your argument for withholding this information despite your failure to comply with section 552.301.

Section 552.137 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. [Emphasis added.]

Section 552.137 requires the City to withhold e-mail addresses of members of the public that are provided for the purpose of communicating electronically with a governmental body, unless the members of the public have affirmatively consented to their release to the general public. A review of the submitted documents provides no indication that any of the holders of the personal email addresses at issue gave their affirmative consent to disclosure. Therefore, we agree with your assertion that section 552.137 of the Government Code requires the City to withhold most of the email addresses the City marked on the requested information. Further, we have marked additional email addresses the City must withhold as well as information the City must release.

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).

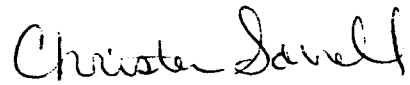
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

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,



Christen Sorrell
Assistant Attorney General
Open Records Division

CHS/seg

Ref: ID# 177486

Enc: Submitted documents

c: Mr. Jeff Branscome
17000 El Camino Real, Suite 204-B
Houston, Texas 77058
(w/o enclosures)