The ruling you have requested has been modified pursuant to a court order. The court judgment has been attached to this document.

ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 29, 2006

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

OR2006-06985

Dear Mr. Olson:

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# 253000.

The City of Friendswood (the "city"), which you represent, received a request for the badge numbers and picture identifications of all male officers employed by the Friendswood Police Department. You claim that the requested information is excepted from disclosure under sections 552.101, 552.1175, and 552.119 and of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the city's obligations under the Act. Pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving the 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. *See* Gov't Code § 552.301(e). You have not submitted to this office a copy or representative sample of the picture identifications that were requested. Consequently, we find that the city failed to comply with the procedural requirements of section 552.301 with respect to the requested picture identifications.

Pursuant to section 552.302 of the Government Code, the city's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested picture identifications are public and must be released unless a compelling reason exists to withhold this 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) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). You assert that the picture identifications are excepted from disclosure under sections 552.101 and 552.119 of the Government Code. Sections 552.101 and 552.119 can provide compelling reasons to withhold the information from disclosure under section 552.302. *See* Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions); *see generally* Open Records Decision No. 150 (1977) (compelling reason may exist to withhold information when information is confidential under other law or third party interests are affected). However, because you have not submitted the requested picture identifications for our review, we have no basis for finding this information confidential. We therefore conclude that the city must release the requested picture identifications to the requestor. If you believe the picture identifications are confidential and may not lawfully be released, you must challenge the ruling in court as outlined below.

We now address your claimed exceptions for the requested badge numbers. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. You assert that the badge numbers are excepted under section 552.101 in conjunction with section 418.176 of the Government Code. Section provides in relevant part the following:

> (a) Information is confidential if the information is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity and:
>
> > (1) relates to staffing requirements of an emergency response provider, including law enforcement agency, a fire-fighting agency, or an emergency services agency[.]

Gov't Code § 418.176(a)(1). The fact that information may relate to a governmental body's security concerns does not make the information *per se* confidential under the Texas Homeland Security Act. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provisions 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 Texas Homeland Security Act must adequately explain how the responsive records fall within the scope of the claimed provision. *See* Gov't Code § 552.301(e)(1)(A). You claim that the requested badge numbers

are protected from disclosure under section 418.176(a)(1) as this information relates to the staffing requirements of an emergency response provider. However, you have not provided any arguments explaining how the badge numbers fall within the scope of this provision. Therefore, you have failed to demonstrate the applicability of this provision to the requested badge numbers.

We now turn to your claim under section 552.117 of the Government Code.[1] Section 552.117(a)(2) of the Government Code excepts from disclosure the current and former home addresses and telephone numbers, social security numbers, and family member information regarding a peace officer regardless of whether the officer elected under section 552.024 or 552.1175 of the Government Code to keep such information confidential. *See* Gov't Code § 552.117(a)(2). You assert that the release of the badge numbers would reveal whether or not the peace officers at issue have family members or other personal information. However, you have not explained, nor do the documents reflect, that the release of the badge numbers would reveal such information. Therefore, you have failed to demonstrate the applicability of section 552.117(a)(2) to the badge numbers. Accordingly, we conclude that the city must release the requested badge numbers 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

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[1]Although you assert section 552.1175 of the Government Code, section 552.117 of the Government Code is the applicable exception to assert in this instance.

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,

Candice M. De La Garza
Assistant Attorney General
Open Records Division

CMD/krl

Ref: ID# 253000

Enc. Submitted documents

c: Mr. Travis Cheek
1101 Merriwood
Friendswood, Texas 77546
(w/o enclosures)

COPY

CAUSE NO. D-1-GV-06-001347

CITY OF FRIENDSWOOD, TEXAS, Plaintiff,	§	IN THE DISTRICT COURT OF
V.	§	TRAVIS COUNTY, TEXAS
GREG ABBOTT, in his official capacity as ATTORNEY GENERAL OF THE STATE OF TEXAS, Defendant.	§	250th JUDICIAL DISTRICT

Filed in The District Court of Travis County, Texas
AUG 09 2007
At 8:50 A.M.
Amalia Rodriguez-Mendoza, Clerk

AGREED FINAL JUDGMENT

On this date, the Court heard the parties' motion for agreed final judgment. Plaintiff City of Friendswood ("Friendswood") and Defendant Greg Abbott, Attorney General of Texas, appeared by and through their respective attorneys and announced to the Court that all matters of fact and things in controversy between them had been fully and finally compromised and settled. This cause is an action under the Public Information Act (PIA), Tex. Gov't Code Ann. ch. 552. The parties represent to the Court that, in compliance with Tex. Gov't Code Ann. § 552.325(c), the requestor, Travis Cheek, was sent reasonable notice of this setting and of the parties' agreement that Friendswood must withhold some of the information at issue; that the requestor was also informed of his right to intervene in the suit to contest the withholding of this information; and that the requestor has not informed the parties of his intention to intervene. Neither has the requestor filed a motion to intervene or appeared today. After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED that:

1. The picture identifications of three undercover officers are excepted from disclosure under Tex. Gov't Code Ann. § 552.119, and the names and badge numbers of the three undercover

officers are confidential under Tex. Gov't Code Ann. § 552.101.

2. Friendswood must withhold from the requestor the information described in ¶ 1 of this Agreement.

3. Friendswood no longer contests the disclosure of the names, picture identifications and badge numbers of the remaining male officers employed by Friendswood; if it has not already done so, Friendswood shall disclose this information, by releasing the remaining male officers' identification cards, to the requestor, promptly upon receipt of a final judgment signed by the court.

3. All costs of court are taxed against the parties incurring the same;

4. All relief not expressly granted is denied; and

5. This Agreed Final Judgment finally disposes of all claims between Plaintiff and Defendant and is a final judgment.

SIGNED this the 9 day of August, 2007.

PRESIDING JUDGE

APPROVED:

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