ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 12, 2009

Ms. Martha T. Williams
Olson & Olson L.L.P.
Attorney for City of Friendswood
Wortham Tower, Suite 600
2727 Allen Parkway
Houston, Texas 77019

OR2009-11236

Dear Ms. Williams:

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# 352079.

The City of Friendswood (the "city"), which you represent, received a request for all documents provided by the city or city council to third parties that support that section 331.001 of the Local Government Code does not apply to the proposed acquisition of park land in Alvin, and that the city definition of parks includes parks outside the city. You claim that the requested information is excepted from disclosure under section 552.107 of the Government Code.[1] We have considered the exception you claim and reviewed the submitted information.

Section 552.107(1) of the Government Code protects information coming 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

[1]Although you raise the attorney-client privilege under rule 503 of the Texas Rules of Evidence, we note that section 552.107 is the proper exception to raise for your attorney-client privilege claim in this instance. *See* Open Records Decision No. 676 (1988). Further, we note that although you raise sections 552.101 and 552.111 of the Government Code as exceptions to disclosure, you have not submitted any arguments regarding the applicability of these exceptions nor have you identified any information you seek to withhold under these exceptions. Therefore, we do not address the applicability of sections 552.101 and 552.111 to the submitted information. *See* Gov't Code §§ 552.301, .302.

in order to withhold the information at issue. 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. 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. *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 a 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. TEX. R. EVID. 503(b)(1). 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.*, 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. *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).

You generally assert that the submitted documents contain information within the scope of the attorney-client privilege. We note, however, that you have failed to identify some of the parties to the communications or explain their relationship with the city. *See* ORD 676 at 8. Thus, you have failed to demonstrate that this information documents privileged attorney-client communications. Therefore, the city may not withhold any portion of the submitted information under section 552.107 of the Government Code.

We note that the submitted information contains an e-mail address that is subject to section 552.137 of the Government Code.[2] Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating

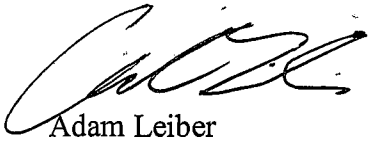
[2]The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov't Code § 552.137(a)-(c). We have marked the e-mail address that does not appear to be of a type specifically excluded by section 552.137(c). Therefore, the city must withhold the marked e-mail address pursuant to section 552.137 of the Government Code, unless the city has received consent for its release. The remaining information must be released to the requestor.[3]

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Adam Leiber
Assistant Attorney General
Open Records Division

ACL/rl

Ref: ID# 352079

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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[3]We note the information being released contains the requestor's e-mail address. Because the information being released contains information relating to the requestor that would be excepted from disclosure to the general public to protect the requestor's privacy, the city must request another ruling from our office if it receives a future request for this information from individuals other than this requestor or her authorized representative. *See* Gov't Code § 552.023.