ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 31, 2013

Ms. Elizabeth L. White
Counsel for the City of Friendswood
Ross, Banks, May, Cron & Cavin, P.C.
2 Riverway, Suite 700
Houston, Texas 77056-1918

OR2013-01769

Dear Ms. White:

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# 478014 (City Ref. No. W002139-110712; Ross Banks File No. 4396-001).

The City of Friendswood (the "city"), which you represent, received a request for all e-mails for a specified time period to or from city council and staff members who sit on the city's Park Ad-Hoc Committee (the "committee") pertaining to the committee or any of the committee's activities. You state the city is releasing some of the requested information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.103, 552.106, 552.107, 552.111, 552.117, and 552.137 of the Government Code.[1] We have considered the exceptions you claim and reviewed the submitted representative sample of information.[2]

Initially, we note the requestor specifically excluded personal telephone numbers and personal e-mail addresses from his request for information. Therefore, those types of information are not responsive to the present request for information. As such, we need not

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[1]Although you raise section 552.101 of the Government Code in conjunction with Texas Rule of Civil Procedure 192.5 and Texas Rule of Evidence 503, this office has concluded that section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). Furthermore, we note the proper exceptions to raise when asserting the attorney-client privilege and work product privilege for information not subject to section 552.022 of the Government Code are sections 552.107 and 552.111 of the Government Code, respectively. *See* Open Records Decision Nos. 676 at 1-2, 677 (2002).

[2]This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

address your argument under section 552.117 of the Government Code for the personal cellular telephone numbers in Exhibits C and E, or your argument under section 552.137 of the Government Code for the personal e-mail addresses in Exhibit E. Additionally, we note some of the information in Exhibit C, which we have marked, and all of the information in Exhibit D is not responsive to the present request for information because it does not consist of e-mail correspondence and was created after the present request for information was received.[3] This ruling does not address the public availability of any information that is not responsive to the request, and the city need not release such information in response to this request.

You claim Exhibits A and B are protected under section 552.103 of the Government Code. Section 552.103 provides, in part:

> (a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.
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> . . .
>
> (c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body that claims an exception to disclosure under section 552.103 has the burden of providing relevant facts and documentation sufficient to establish the applicability of this exception to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate that (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to the pending or anticipated litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.). The governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a). *See* Open Records Decision No. 551 at 4 (1990).

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[3]The Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by the governmental body or on its behalf. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

You state, and provide supporting documentation showing, a lawsuit styled *Friendswood Independent School District v. Farley*, in which the city is a plaintiff, was filed in the 405th Judicial District Court of Galveston County prior to the city's receipt of the present request for information. Based on your representations and our review, we find the city was a party to pending litigation on the date it received the request for information. Further, you state, and we agree, the information at issue relates to the pending litigation. Accordingly, we conclude the city may withhold Exhibits A and B under section 552.103.[4]

We note once information has been obtained by all parties to the pending litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to the information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). We also note the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision Nos. 350 (1982), 349 at 2.

In summary, the city may withhold Exhibits A and B under section 552.103 of the Government Code. The city must release the remaining responsive information in Exhibits C and E.

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, toll free at (888) 672-6787.

Sincerely,

Lindsay E. Hale

Lindsay E. Hale
Assistant Attorney General
Open Records Division

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[4]As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Ref: ID# 478014

Enc. Submitted documents

c: Requestor
(w/o enclosures)