ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 18, 2005

Mr. David M. Swope
Assistant County Attorney
Harris County Attorney
1019 Congress, 15th Floor
Houston, Texas 77002

OR2005-09444

Dear Mr. Swope:

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# 234604.

The Harris County Infrastructure Engineering Division (the "county") received a request for a specified survey in electronic computer assisted design ("CAD") form. You claim that the submitted information is excepted from disclosure under section 552.111 of the Government Code. You also assert that the county is not required to release the information in the requested electronic format. We have considered your arguments and reviewed the submitted information.

Initially, we must address the applicability of section 552.007 of the Government Code to the requested information. Section 552.007 provides that if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law. *See* Gov't Code 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). The county's Right of Way Department has already released a "hard copy" of the requested information to the requestor; therefore, pursuant to section 552.007 the county may not now withhold this information unless its release is expressly prohibited by law. Section 552.111 of the Government Code is a discretionary exception to disclosure under the Act and does not constitute law that makes information confidential or expressly

prohibits its release for purposes of section 552.007. *See* Open Records Decision Nos. 663 (1999) (governmental body may waive section 552.111); *see also* Open Records Decision No. 522 at 4 (1989) (discretionary exceptions in general). Accordingly, the county may not withhold the requested information under section 552.111.

The requestor requested the survey in CAD format, but the county asserts that it may limit release of the survey to a paper or electronic PDF read-only format. You have submitted a copy of the survey to us in the requested CAD format; thus, we assume that the county is able to provide a copy of the requested information to the requestor in this requested format. Therefore, we conclude that the county is required to provide the information to the requestor in the CAD format he has specified. *See* Gov't Code § 552.002(a), (b). But we note that section 552.204 of the Government Code provides that a governmental body is not responsible for a requestor's use of information released pursuant to the Act. *See id.* § 552.204(a).

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 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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/jpa

Ref: ID#234604

Enc. Submitted documents

c: Mr. Marc Stanley
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(w/o enclosures)