ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 5, 2005

Mr. Gary A. Scott
Assistant City Attorney
City of Conroe
P. O. Box 3066
Conroe, Texas 77305

OR2005-10856

Dear Mr. Scott:

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# 237395.

The City of Conroe (the "city") received a request for copies of the appraisals for a specified property. You claim that the requested information is excepted from disclosure under section 552.105 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides that "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body" may not be withheld from the public unless the information is excepted from disclosure under section 552.108 of the Government Code or expressly confidential under other law. Gov't Code § 552.022(a)(1). The submitted information consists of completed appraisal reports made for the city, which are made expressly public by section 552.022, unless they are expressly made confidential under other law. Section 552.105 of the Government Code is a discretionary exception under the Act that does not constitute "other law" for purposes of section 552.022. *See* Open Records Decision Nos. 564 (1990) (governmental body may waive statutory predecessor to section 552.105), 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.105 is not other law that makes information confidential for the purposes of section 552.022. Therefore, the city may not withhold the submitted information under

section 552.105 of the Government Code. As you raise no other exceptions, and the information is not otherwise confidential by law, the submitted information must be released 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 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,

Jaime L. Flores
Assistant Attorney General
Open Records Division

JLF/krl

Ref: ID# 237395

Enc. Submitted documents

c: Ms. Carol Van Alstyne
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(w/o enclosures)