



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 25, 1994

Honorable Jay P. Millikin
Mayor, City of Garden Ridge
9357 Schoenthal Road
Garden Ridge, Texas 78266

OR94-401

Dear Mayor Millikin:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 26089.

The City of Garden Ridge (the "city") received a request for address labels held by the city water company. After receiving this request, the city submitted forms to its water company customers advising them that they could request that their address, telephone number, and social security number be kept confidential under section 2 of House Bill 859, Acts 1993, 73d Leg., ch. 473 (codified at V.T.C.S. art. 1446h, § 2). See V.T.C.S. art. 1446h, § 4 (requiring government-operated utility to inform its customers of right to request confidentiality of personal information). The city indicated to its customers that they had 30 days to respond to the notification. Given these circumstances, you argue that the city may withhold under House Bill 859 all of the requested information until the 30-day response period is over. You also argue that the city may continue to withhold the addresses and telephone numbers of those customers who request confidentiality.

Section 2 of House Bill 859 prohibits a government-operated utility from disclosing the address, telephone number, or social security number ("personal information") in a customer's account records "if the customer requests that the government-operated utility keep the information confidential." V.T.C.S. art. 1446h, § 2. It further provides:

The customer may request confidentiality by delivering to the government-operated utility an appropriately marked form provided under Section 4(3) of this Act or any other written request for confidentiality. The customer may rescind a request for confidentiality by providing the government-operated utility written permission to disclose personal information.

Id. Section 4 provides as follows:

A government-operated utility shall include with a bill sent to each of its customers:

(1) a notice of the customer's right to request confidentiality of personal information under this Act;

(2) a statement of the amount of any fee applicable to the request; and

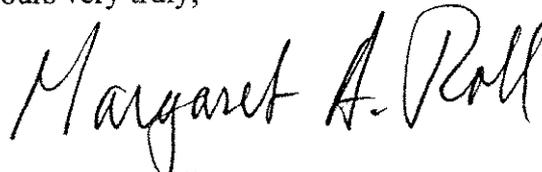
(3) a form that the customer may use to request that confidentiality by marking an appropriate box on the form and returning it to the government-operated utility.

This office addressed your questions regarding this legislation in Open Records Decision No. 625 (1994) (copy enclosed). In that decision, we concluded a government-operated utility must release personal information about a customer in response to any request received before the customer asks that the information be kept confidential, regardless of whether the government-operated utility has provided the notice required by section 4. Open Records Decision No. 625 at 4-6. In other words, a government-operated utility may not withhold a customer's address and telephone number merely because the government-operated utility has not yet notified the customer of his or her rights under House Bill 859. Furthermore, a government-operated utility must determine the availability of requested information at the time the request is made. Therefore, a government-operated utility may not withhold information about a customer who does not notify the government-operated utility that he or she wants the information kept confidential until after the information is requested. *Id.* at 6.

Because you indicate that you notified your customers of their rights under House Bill 859 in April of this year, we assume that your first argument is moot. However, in accordance with Open Records Decision No. 625, we conclude that the city must release the address labels for all customers from whom it had not received a written request for confidentiality as of April 15, 1994, the date the city received the open records request for the information. The city may withhold the address labels for any customers from whom it had received a written request for confidentiality as of April 15, 1994.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,

A handwritten signature in black ink that reads "Margaret A. Roll". The signature is written in a cursive style with a large, looped initial "M".

Margaret A. Roll
Assistant Attorney General
Open Government Section

MAR/GCK/rho

Ref.: ID# 26089

Enclosure: Open Records Decision No. 625

cc: Mr. Robert J. Kern
21055 Bat Cave Road
Garden Ridge, Texas 78266