



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 18, 1998

Mr. Richard L. Hamala
Lloyd, Gosselink, Blevins, Rochelle,
Baldwin & Townsend
111 Congress Avenue, Suite 1800
Austin, Texas 78701

OR98-1223

Dear Mr. Hamala:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 115057.

The Aqua Water Supply Corporation, Inc. ("Aqua") is a non-profit water supply corporation that provides water supply service to Bastrop, Caldwell, Williamson, Lee, Fayette and Travis County areas. Aqua received a request for various documents including:

the information you may have produced for Terry Flahive during the last six months, including mailing list, or other printed document(s) and receipts for any charges that may have been charged.

...

[P]lease consider this a standing open records request for any Federal Grant applications that AQUA has produced during the last sixty days or that may be produced during 1998. Once the Board of Directors or you have formally approved the subject federal grant application please make this application available for my review.

... I would like to review the 1997 proxy cards plus any that you have received for the 1998 stockholders meeting during the same time period the information in this request is made available to me.

You request our decision whether the requested information is excepted from disclosure under section 552.101. You have submitted the requested information to this office for review.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes.

Section 182.052¹ of the Texas Utility Code provides for the confidentiality of certain "personal information," which is defined as an individual's address, telephone number, or social security number, held by a government-operated utility.² A government-operated utility may not disclose an individual's address, telephone number, or social security number if the customer has requested that the information be maintained as confidential. Additionally, the statute only protects the personal information of those individuals who had requested confidentiality as of the time a request for information was received. Open Records Decision No. 625 (1994).

We have examined the documents provided which you deem responsive to the requestor and conclude that you must release the information requested subject to the redaction of personal information if your records show that the customer wishes personal information be kept confidential.

We next address the issue of the request for a "standing open records request for any Federal Grant applications that AQUA has produced during the last sixty days or that may be produced during 1998." You do not raise any exceptions which preclude the release of the federal grant application which you have produced within the last sixty days, and we assume that you have made those available, if any, to the requestor. However, a governmental body need not comply with a standing request to provide information "on a periodic basis," or to treat a request as embracing information prepared after the request was made, or to inform the requestor subsequently when the information does come into existence. Open Records Decision Nos. 476 (1987), 465 (1987), 452 (1986).

Finally, we address your assertion of the confidentiality of the 1998 proxy cards prior to the time at which the votes are counted. In this instance, the requestor also asks for the

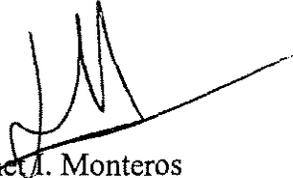
¹Section 182.052, Confidentiality of Personal Information, provides: (a) Except as provided by Section 182.054, a government-operated utility may not disclose personal information in a customer's account record if the customer requests that the government-operated utility keep the information confidential. (b) A customer may request confidentiality by delivering to the government-operated utility an appropriately marked form provided under Subsection (c)(3) or any other written request for confidentiality. (c) A government-operated utility shall include with a bill sent to each customer: (1) a notice of the customer's right to request confidentiality under this subchapter; (2) a statement of the amount of any fee applicable to the request; and (3) a form by which the customer may request confidentiality by marking an appropriate box on the form and returning it to the government-operated utility. (d) A customer may rescind a request for confidentiality by providing the government-operated utility written permission to disclose personal information.

²Section 182.051(4). Definitions provides that "personal information" means an individual's address, telephone number, or social security number.

review of the 1997 proxy cards plus any that you have received for the 1988 stockholders meeting during the same time period the information in this request is made available to him. As you do not assert any exceptions to the 1997 proxy cards, we presume that you have made those available to the requestor. It is your position that making the 1998 proxy cards available to the requestor prior to the final counting should be confidential under section 552.101 of the Government Code, but do not proffer any applicable constitutional, statutory authority or judicial decision to buttress your argument in this matter. However, you indicate in subsequent correspondence to this office that there has been a final count of the 1998 proxies in a recent meeting and so you have released the proxies to the requestor. Consequently, we deem that particular issue as moot for purposes of this ruling.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Janet A. Monteros
Assistant Attorney General
Open Records Division

JIM/alg

Ref.: ID# 115057

Enclosures: Submitted documents

cc: Mr. Roger Dillon
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(w/o enclosures)