



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

January 27, 2003

Mr. Ken Johnson
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2003-0553

Dear Mr. Johnson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 175520.

The City of Waco (the "city") received a request for information concerning water and sewer usage at a specified address, and information concerning garbage collection service at another specified address. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code. We have considered the exception you claim and reviewed the submitted information.

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 182.052 of the Utilities Code provides in relevant part:

- (a) Except as provided by Section 182.054, a government-operated utility may not disclose personal information in a customer's account record, or any information relating to the volume or units of utility usage or the amounts billed to or collected from the individual for utility usage, if the customer requests that the government-operated utility keep the information confidential. However, a government-operated utility may disclose information related to the customer's volume or units of utility usage or

amounts billed to or collected from the individual for utility usage if the primary source of water for such utility was a sole-source designated aquifer.

“Personal information” under section 182.052(a) means an individual’s address, telephone number, or social security number. Util. Code § 182.051(4). Water, sewer, and garbage services are included in the scope of utility services covered by section 182.052. Util. Code § 182.051(3). We note that the account records at issue contain addresses, information relating to the amounts billed to or collected from customers for utility usage, and information relating to the volume or units of utility usage.

We first address the public availability of the addresses appearing in the submitted utility account records. You state that the customer at issue requested that information in utility account records pertaining to each address specified in the request be kept confidential. You do not, however, identify the specific information for which the customer requested confidentiality. Furthermore, you have not demonstrated that the customer requested confidentiality for account information pertaining to each of the addresses appearing in the submitted records. Therefore, if the customer requested confidentiality for account information pertaining to each address appearing in the submitted records, prior to the city’s receipt of the present request, we determine that the city must withhold the addresses under section 552.101 of the Government Code in conjunction with section 182.052(a) of the Utilities Code.¹ If, however, the customer did not timely request to keep these addresses confidential, then the city must release the addresses to the requestor. We have marked the addresses that may be confidential pursuant to section 182.052(a) of the Utilities Code.

We next address the request for sewer and garbage utility usage information. We are unable to determine from the information provided whether the customer at issue timely requested that utility usage and billing information be kept confidential. We therefore determine that, if the customer at issue requested that usage and billing information relating to sewer and garbage utility service be kept confidential prior to the date the city received the present request, then the city must withhold this information under section 552.101 in conjunction with section 182.052(a) of the Utilities Code. Otherwise, the city must release usage and billing information relating to sewer and garbage utility service to the requestor.

Next, the requestor also asks for water usage information from one of the specified addresses. As noted, we are unable to determine from the information provided whether the customer at issue timely requested that utility usage information be kept confidential. Furthermore, section 182.052(a) of the Utilities Code provides that the utility may disclose a customer’s water usage information, notwithstanding the customer’s request for confidentiality, if the primary source of water for such utility is a sole-source designated aquifer. We are also unable to determine from the information provided whether the primary

¹ We note that none of the exceptions to confidentiality listed in section 182.054 apply in this instance.

source of water for the city's utility is a sole-source designated aquifer. Therefore, we make the following determination: if the primary source of water for the city utility is not a sole-source designated aquifer, and if the customer at issue requested that water usage and billing information be kept confidential prior to the date the city received the present request, we determine that such information is confidential under section 182.052 of the Utilities Code and must be withheld. *See also* Open Records Decision No. 625 (1994) (construing statutory predecessor). If, however, the primary source of water is a sole-source aquifer, and the customer timely requested that water usage and billing information be kept confidential, the city has the discretion to release water usage and billing information, notwithstanding the customer's request for confidentiality. Finally, in either circumstance, if the customer at issue did not timely elect to keep water usage and billing information confidential, then the city must release water usage and billing information to the requestor. We have marked water usage and billing information that may be confidential pursuant to 182.052(a) of the Utilities Code.

In summary, if the customer at issue timely elected to keep addresses confidential, the city must withhold this information under section 552.101 of the Government Code in conjunction with section 182.052(a) of the Utilities Code. If the customer timely elected to keep utility account information pertaining to sewer and garbage utility service confidential, then the city must withhold sewer and garbage usage and billing information under section 552.101 in conjunction with section 182.052. If the primary source of water for the city utility is not a sole-source aquifer and the customer timely elected to keep water usage and billing information confidential, then the city must withhold water usage and billing information under section 552.101 in conjunction with section 182.052. If the primary source of water for the city utility is a sole-source aquifer and the proper timely election was made, the city has the discretion to release water usage and billing information. If the customer at issue did not timely request to keep utility account information confidential, the city must release the responsive information to the requestor. We have marked information that may be confidential under section 552.101 in conjunction with section 182.052 of the Utilities Code. The remainder of the responsive 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, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 Department of Public 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 Texas Building and Procurement Commission 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 175520

Enc: Submitted documents

c: Ms. Sandhya Rai
1288 Speight Avenue
Waco, Texas 76706
(w/o enclosures)