



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

July 29, 2003

Mr. Darrell G-M Noga
Roberts & Smaby
1717 Main Street, Suite 3000
Dallas, Texas 75201

OR2003-5197

Dear Mr. Noga:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 184951.

The City of Coppell (the "city") received a request for all water records regarding a specified property from January 2000 to January 2002. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions 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 service is included in the scope of utility services covered by section 182.052. Util. Code § 182.051(3). We note that the account record at issue contains an address, phone number, and information relating to the amounts billed to or collected from a customer for utility usage.

We first address the public availability of the address and phone number appearing in the submitted utility account records. You state, and provide documentation showing, that the customer at issue requested that “personal information” in utility account records be kept confidential. However, based on the information you provided, we are unable to determine if the election for privacy was made prior to the date the city received the present request. Therefore, to the extent that the customer timely elected to keep his personal information private, we determine that the city must withhold the customer’s address and phone number under section 552.101 of the Government Code in conjunction with section 182.052(a) of the Utilities Code.¹

We next address the public availability of the amounts billed to or collected from the customer for water service at the specified address. We are unable to determine from the information provided whether the customer at issue timely requested that billing information be kept confidential. Furthermore, section 182.052(a) of the Utilities Code provides that the utility may disclose a customer’s billing 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 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 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* 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 billing information be kept confidential, the city has the discretion to release billing information, notwithstanding the customer’s request for confidentiality. Finally, in either circumstance, if the customer at issue did not timely elect to keep billing information confidential, then the city must release billing information to the requestor. We have marked billing information that may be confidential pursuant to 182.052(a) of the Utilities Code.

We note that we have also marked personal financial information that is confidential under section 552.101 in conjunction with common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the

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

information is not of legitimate concern to the public. *Industrial Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. This office has concluded that financial information concerning an individual is in some instances protected by a common law right to privacy. See Open Records Decision Nos. 545 (1990), 523 (1989). A previous opinion of this office states that "all financial information relating to an individual . . . ordinarily satisfies the first requirement of common law privacy, in that it constitutes highly intimate or embarrassing facts about the individual, such that its public disclosure would be highly objectionable to a person of ordinary sensibilities." Open Records Decision No. 373 at 3 (1983). You must withhold the personal financial information that we have marked.

We note that you raise section 552.117 with respect to the submitted information. Section 552.117 excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. See Open Records Decision No. 530 at 5 (1989). You have not demonstrated, nor are we able to determine, how any of the submitted information relates to a current or former official or employee of the city. Therefore, we are unable to determine whether section 552.117 is applicable to the submitted information.

We note that the submitted documents contain information that is confidential under section 552.136 of the Government Code. Section 552.136 of the Government Code states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. The city must, therefore, withhold the marked account number under section 552.136.

In summary, to the extent the election for privacy was timely made, the city must withhold the marked address and phone number under section 552.101 of the Government Code in conjunction with section 182.052(a) of the Utilities Code. If the primary source of water for the city utility is not a sole-source aquifer and the customer timely elected to keep billing information confidential, then the city must withhold 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 billing information. If the customer at issue did not timely request to keep utility account information confidential, the city must release billing 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. You must withhold the information that we have marked under section 552.101 in conjunction with common-law privacy. You

must withhold the account numbers we have marked under section 552.136. The remainder of 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, 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 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 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,

A handwritten signature in black ink that reads "Jennifer E. Berry". The signature is written in a cursive style with a large initial "J" and "B".

Jennifer E. Berry
Assistant Attorney General
Open Records Division

JEB/sdk

Ref: ID# 184951

Enc: Submitted documents

c: Ms. Tina Kincaid
John H. Carney & Associates
6700 North Central Expressway
Dallas, Texas 75206
(w/o enclosures)