



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 3, 2004

Ms. Betty Zacharias
Office Manager
Picoso Water Supply Corporation
3274 FM 2579
Floresville, Texas 78114

OR2004-7555

Dear Ms. Zacharias:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 208361.

The Picoso Water Supply Corporation (the "corporation") received a request for a current member list with addresses and telephone numbers. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.¹

Initially, we address the corporation's obligations under section 552.301 of the Government Code. This section prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires the governmental body to ask for the attorney general's decision and state the exceptions to disclosure that it claims not later than the tenth business day after the date of its receipt of the written request for information. *See* Gov't Code § 552.301(b). Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of its receipt of the request, (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed

¹This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the corporation to withhold any information that is substantially different from the submitted information. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

statement of the date on which the governmental body received the request, or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples of the information if it is voluminous. *See id.* § 552.301(e)(1)(A)-(D). If a governmental body does not request an attorney general decision as prescribed by section 552.301, the information requested in writing is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold the information. *See id.* § 552.302.

In this instance, the copy of the request for information that you submitted to this office reflects that the corporation received the request on March 22, 2004. The date of your request for this decision, June 30, 2004, was well beyond the ten-business-day period prescribed by section 552.301(b). Likewise, you did not submit the copy of the request for information or the representative sample of requested information within the fifteen-business-day period prescribed by section 552.301(e). Therefore, the submitted information is presumed to be public and must be released under section 552.302, unless there is a compelling reason to withhold any of the information. *See also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). The presumption that information is public under section 552.302 can generally be overcome when the information is confidential by law or third-party interests are at stake. As a claim under section 552.101 can provide a compelling reason for non-disclosure under section 552.302, we will address your arguments under this exception.

Section 552.101 excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information that another statute makes confidential. You raise section 552.101 in conjunction with section 182.052 of the Utilities Code. This section provides in 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.

Util. Code § 182.052(a). We note that water service is included in the scope of utility services covered by section 182.052. *See id.* § 182.051(3). For the purposes of section 182.052, “personal information” means an individual’s address, telephone number, or social security number. *See id.* § 182.051(4); *see also* Open Records Decision No. 625 (1994) (construing statutory predecessor). The names of customers are not included in the definition of personal information under section 182.051(4), and thus customers’ names are not

confidential under section 182.052. Under section 182.054, there are six statutory exceptions to section 182.052(a)'s prohibition of disclosure. *See* Util. Code § 182.054. You have provided no information that would permit this office to conclude that any of these exceptions is applicable in this instance.

We understand you to represent that the addresses and telephone numbers contained in the submitted documents are those of customers of the corporation. You do not inform us, however, as to whether or to what extent these customers requested confidentiality for their addresses and telephone numbers under section 182.052 before the corporation received the present request for information. *See* Open Records Decision No. 625 at 7 (utility billing information must be released unless customer requests confidentiality before utility receives request for information). Therefore, we must rule in the alternative. Thus, to the extent that the submitted addresses and telephone numbers are those of customers of the corporation who requested confidentiality for their personal information before the corporation received the present request for information, the addresses and telephone numbers of such customers must be withheld from disclosure under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code. But to the extent that the submitted addresses and telephone numbers are those of customers who did not request confidentiality for their personal information before the corporation received this request, the addresses and telephone numbers of such customers are not excepted from disclosure under section 552.101 in conjunction with section 182.052 of the Utilities Code and must be released to the requestor. In any event, the corporation must release all of the submitted information that does not consist of customers' addresses and telephone numbers.

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, appearing to read "J. W. Morris III", with a horizontal line extending to the right from the end of the signature.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 208361

Enc: Submitted documents

c: Ms. Maria A. Cabriales
Route 2, Box 154F
Floresville, Texas 78114-9765
(w/o enclosures)