



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 22, 2005

Mr. Richard McCabe
WWSC Manager
Westminster Water Supply Corporation
P. O. Box 819
Westminster, Texas 75409

OR2005-05525

Dear Mr. McCabe:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 226619.

The Westminster Water Supply Corporation (the "corporation") received two requests from two different requestors for certain account information. The first request is for water department member payment records. The second request is for the corporation's "Accumulated Transaction Journal for January 2005 – May 2005." You have submitted information that you claim is confidential by law. You also state that the corporation has asked the first requestor to clarify his request. We have considered your arguments and have reviewed the submitted information.¹ We also received correspondence from the second requestor. *See* Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

Initially, we address your representations with respect to the request for "water department member payment records, past and present." You inform us that the corporation has "written [the first requestor] and asked him to be more precise of the date he is requesting the information on." You also inform us that the corporation has not received a response to its

¹This letter ruling assumes that the submitted information is a representative sample 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).

request for clarification. We note that a governmental body may communicate with a requestor for the purpose of clarifying or narrowing a request for information. *See* Gov't Code § 552.222(b); Open Records Decision No. 663 at 2-5 (1999). Based on your representation that the corporation has not received a response to its letter to the first requestor, we find that the corporation has no obligation at this time to release any information that may be responsive to the first request. Please note, however, that if the corporation receives a response to its request for clarification and wishes to withhold any information to which the requestor seeks access, you must request another decision. *See* Gov't Code §§ 552.301, .302.

With respect to the second request for information, we must address your obligations under section 552.301 of the Government Code. This section prescribes the 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 552.302 provides that if a governmental body does not request an attorney general decision as prescribed by section 552.301, the requested information 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; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App. — Austin 1990, no writ).

In this instance, you have not demonstrated that the corporation requested a decision within ten business days after the date of its receipt of the second request for information. Therefore, the information to which the second requestor seeks access is presumed to be public and must be released, unless there is a compelling reason to withhold any of the information. The presumption that information is public under section 552.302 can generally be overcome by a demonstration that the information is confidential by law or that third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Because you contend that the second requestor seeks access to confidential information, we will address your arguments.

Section 552.101 of the Government Code 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 other statutes make confidential. Section 182.052 of the Utilities Code 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 that are encompassed by section 182.052. *Id.* § 182.051(3). "Personal information" under section 182.052(a) means an individual's address, telephone number, or social security number. *Id.* § 182.051(4). We note that the names of customers are not included in the definition of personal information and are therefore not confidential under section 182.052 of the Utilities Code. We also note that a post office box number is not an address for purposes of section 182.051. Section 182.054 of the Utilities Code provides six exceptions to section 182.052(a)'s disclosure prohibition. *See id.* § 182.054. You have provided no information that would allow us to conclude that these exceptions apply in this instance.

You indicate that some of the submitted information relates to water customers of the corporation who have requested confidentiality for their personal information. You have submitted copies of the customers' written requests. We note, however, that the submitted requests for confidentiality do not encompass "information relating to the volume or units of utility usage or the amounts billed to or collected from the individual for utility usage[.]" Util. Code § 182.052(a). Therefore, the corporation may not withhold any usage or billing information contained in the submitted records under section 552.101 of the Government Code in conjunction with section 182.052 of the Utility Code.

Furthermore, you do not inform us whether the corporation received these customers' requests for confidentiality prior to the corporation's receipt of the second request for information. *See* Open Records Decision No. 625 at 7 (utility billing information must be released unless customer requests confidentiality before governmental body receives request for information). Consequently, we must rule on the public availability of these customers' personal information in the alternative. Thus, to the extent that the corporation received these customers' requests for confidentiality prior to its receipt of the second request for information, the customers' personal information is confidential under section 182.052 of the Utilities Code and must be withheld from disclosure under section 552.101 of the Government Code. To the extent that the corporation did not receive these requests for confidentiality prior to its receipt of the second request for information, the customers' personal information is not confidential under section 182.052 and may not be withheld from disclosure under section 552.101.

Lastly, we note that section 552.136 of the Government Code is applicable to some of the submitted information.² Section 552.136 provides as follows:

²Unlike other exceptions to disclosure under the Act, this office will raise section 552.136 on behalf of a governmental body, as this exception is mandatory and may not be waived. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding 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. We have marked customer account numbers that the corporation must withhold under section 552.136.

In summary: (1) as the first requestor has not responded to the corporation's request for clarification, the corporation has no obligation at this time to release any information that may be responsive to the first request; however, if the corporation receives a response from the requestor and wishes to withhold any information to which he seeks access, the corporation must request another decision; (2) to the extent that the corporation received the customers' requests for confidentiality prior to its receipt of the second request for information, the customers' personal information is confidential under section 182.052 of the Utilities Code and must be withheld under section 552.101 of the Government Code; and (3) the corporation must withhold the customer account numbers under section 552.136 of the Government Code. The rest of the submitted information must be released.

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.

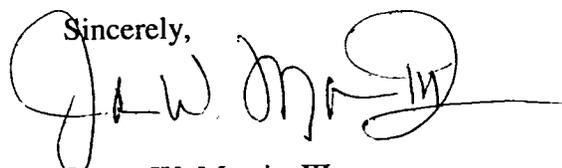
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,


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

JWM/krl

Ref: ID# 226619

Enc: Submitted documents

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