



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 16, 2006

Mr. Ignacio Perez
Assistant City Attorney
City of McAllen
P.O. Box 220
McAllen, Texas 78505-0220

OR2006-02641

Dear Mr. Perez:

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# 244117.

McAllen Public Utility ("MPU") received a request for information related to utility services established by two named individuals. You claim that the requested information is exempted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you have submitted information, which we have marked, that is not responsive to the instant request. This ruling does not address the public availability of information that is not responsive to the request, and MPU need not release such information in response to this request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed).

Section 552.101 exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. Section 182.052 of the Utilities Code provides in relevant part as follows:

- (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.

(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.

Util. Code § 182.052(a)-(b). "Personal information" under section 182.052(a) 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). Water service is included in the scope of utility services covered by section 182.052. Util. Code § 182.051(3). We note, however, that section 182.054 of the Utilities Code provides, in pertinent part, that "[section 182.052] does not prohibit a government-operated utility from disclosing personal information in a customer's account record to . . . (1) an official or employee of the state, a political subdivision of the state, or the United States acting in an official capacity[.]" *Id.* § 182.054(1).

The utility records at issue include information relating to the amounts billed to the customer for utility usage. You indicate that the customer at issue elected to keep his public utility information confidential under section 182.052(a) of the Utilities Code; however, you do not state if the customer elected to keep such information confidential prior to MPU's receipt of the instant request. We note that section 182.052(a) 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 unable to determine from the information provided whether the primary source of water for MPU is a sole-source designated aquifer. Therefore, if the primary source of water for MPU is not a sole-source designated aquifer, provided that the customer made a timely request for confidentiality, his billing amounts are confidential under section 182.052 of the Utilities Code and must be withheld under section 552.101 on that basis. *See* ORD 625. If, however, the primary source of water is a sole-source aquifer, MPU has the discretion to release the billing amounts, notwithstanding the customer's timely request for confidentiality.

This information also includes the customer's personal information, specifically his addresses, telephone number, and social security number. However, we note that the rest of the information at issue, including the name of the customer, his employer's name and telephone number, and utility service initiation and termination dates, are not included in the definition of personal information, and is therefore not subject to section 182.052 of the Utilities Code. *See* Util. Code § 182.051(4); *see also* ORD 625. We further note that, in this instance, the requestor is an investigator with the San Antonio Housing Authority, a political subdivision of the state, who we understand is acting in his official capacity. *See Gene Duke*

Builders, Inc. v. Abilene Housing Authority, 168 S.W.3d 215, 219 (Tex.App.—Eastland 2005, pet. filed) (finding municipal housing authority to be political subdivision of the state). As noted earlier, section 182.054(1) provides that MPU is not prohibited by section 182.052 from disclosing personal information in a customer account to “an official or employee of the state, a political subdivision of the state, or the United States acting in an official capacity[.]” Util. Code. § 182.054(1). Thus, in this instance, regardless of whether the customer timely elected confidentiality, the customer’s personal information must be released to the requestor, unless another exception under the Act applies. *See* ORD 625 at 6 (Act requires government-operated utilities to disclose information to entities and persons listed in the predecessor to section 182.054, unless some other exception to disclosure under the Act applies to the information).

In this regard, we note that section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Gov’t Code § 552.147. Thus, MPU must withhold the customer’s social security number under section 552.147.

The remaining information at issue includes the Texas driver’s license number of the customer. Section 552.130 excepts from public disclosure information that relates to “a motor vehicle operator’s or driver’s license or permit issued by an agency of this state[.]” Gov’t Code § 552.130(a)(1). Therefore, MPU must withhold the customer’s Texas driver’s license number, which we have marked, under section 552.130.¹

In summary, we conclude as follows with respect to the customer’s utility billing amounts: (1) if the customer at issue made a timely request for confidentiality and the primary source of water for MPU *is not* a sole-source designated aquifer, the utility billing amounts of the customer are excepted from disclosure under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code; or (2) if the primary source of water *is* a sole-source aquifer, MPU has the discretion to release the utility billing amounts, notwithstanding the customer’s timely request for confidentiality. Except for the customer’s social security number, which is excepted from disclosure under section 552.147 of the Government Code, MPU must release the customer’s personal information to the requestor. The marked Texas driver’s license number is excepted from disclosure under section 552.130 of the Government Code. The remaining information at issue 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

¹As we are able to make this determination, we need not address your remaining arguments for this information.

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); *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 Office of the Attorney General 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. 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,



Caroline E. Cho
Assistant Attorney General
Open Records Division

CEC/sdk

Ref: ID# 244117

Enc. Submitted documents

c: Mr. David Quintanilla
Fraud Investigator
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(w/o enclosures)