



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 10, 2006

Ms. Julie Y. Fort
City of Frisco
Abernathy, Roeder, Boyd & Joplin P.C.
P.O. Box 1210
McKinney, Texas 75070-1210

OR2006-09021

Dear Ms. Fort:

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# 257733.

The City of Frisco (the "city"), which you represent, received a request for the names, addresses and telephone numbers of all homeowners who received a citation announcing the disconnection of their sprinkler systems since the city's implementation of water restrictions on June 1, 2006. The request was additionally for the names, addresses and telephone numbers of homeowners who received fines on their water bills for violation of the water restrictions since June 1, 2006. 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 reviewed the representative sample of information submitted.¹ We have also considered comments made on the requestor's behalf. Gov't Code §552.304.

Initially, we note and you acknowledge that you have submitted information to this office that is not responsive to the instant request. Information that is not responsive to this request

¹We assume that the sample of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

need not be released. Moreover, we do not address the applicability of the Act to such information in this ruling.

Section 552.101 of the Government Code 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.

(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). Water service is included in the scope of utility services covered by section 182.052. *See* Util. Code § 182.051(3). Section 182.054 of the Utilities Code provides six exceptions to the disclosure prohibition found in section 182.052. *See id.* § 182.054. You have provided no information to allow us to conclude that any of these exceptions apply in this case.

Under section 182.052(a) “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). We note that a customer’s name is not included in the definition of personal information, and therefore is not confidential under section 182.052 of the Utilities Code. *See also* Open Records Decision No. 649 at 3 (1996) (language of statutory confidentiality provision controls scope of its protection). Therefore, you may not withhold the requested customer names under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code. As you claim no other exception to disclosure for the requested customer names, you must release them to the requestor.

The remaining information at issue consists of the responsive customer addresses and telephone numbers. You state, and provide a sample of documentation showing, that “the new customers have tendered the requisite notice of nondisclosure of confidential information.” We conclude that for the customers who made the election for privacy prior

to the date the city received the present request for information, the city must withhold the responsive addresses and telephone numbers under section 552.101 of the Government Code in conjunction with section 182.052(a) of the Utilities Code. However, for those customers who did not make the election for privacy prior to the city's receipt of the request for information, the city must release the responsive addresses and telephone numbers. As previously noted, the responsive customer names 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); *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,



Heather Pendleton Ross
Assistant Attorney General
Open Records Division

HPR/dh

Ref: ID# 257733

Enc: Submitted documents

c: Ms. Linda Leavell
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