



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 19, 2006

Ms. Amanda Horst  
City Secretary  
City of Wolfe City  
P. O. Box 106  
Wolfe City, Texas 75496

OR2006-10836

Dear Ms. Horst:

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# 259499.

The City of Wolfe City (the "city") received a request to "review the records for water usage on every water meter connected to the [city's] public water supply, for the last six months." You seek to withhold the telephone numbers, addresses, and bank account numbers in the submitted information. We have reviewed the submitted information.<sup>1</sup>

The city informs this office that the requestor "has requested that he be allowed to come in an hour a day for a couple of days and have free access to all information contained in [the city's] billing database." You seek guidance on whether to grant this request. In Open Records Decision No. 571(1990), this office determined that the Act does not give members of the public a right to use a governmental body's computer to inspect records for two reasons: (1) to protect the integrity of the governmental records and (2) to prevent access to confidential information. Open Records Decision No. 571 at 4 (1990). Therefore, in this

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<sup>1</sup>We 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.

instance, we conclude that the Act does not require the city to grant the requestor access to the city's computer to conduct a search for public information.

Next, we address the city's procedural obligations under the Act. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(a), (b). Pursuant to section 552.301(e), the governmental body must, within fifteen business days of receiving the request, submit to this office (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e)(1)(A)-(D). You indicate that the city received this request on June 27, 2006. However, you did not request a ruling from this office or supply the information at issue until July 13, 2006. Furthermore, you did not raise any exceptions to disclosure under the Act or provide any arguments explaining the reasons why any such exceptions would apply to allow any portion of the submitted information to be withheld. We therefore conclude that the city failed to comply with the procedural requirements of section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless a compelling reason is demonstrated to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Generally, a compelling reason to withhold information exists when the information is made confidential by another source of law or affects third-party interests. *See* Open Records Decision No. 630 (1994). Upon review of the information at issue, we note that portions of it may be subject to section 552.101, while other portions of this information are subject to section 552.136 of the Government Code. These are mandatory exceptions to disclosure under the Act that may not be waived by a governmental body.<sup>2</sup>

Section 552.101 excepts 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:

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<sup>2</sup>The Office of the Attorney General will raise mandatory exceptions like sections 552.101 and 552.136 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(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).

You do not inform this office whether, prior to the city's receipt of the instant request, the customers at issue elected to keep their utility usage information confidential under section 182.052(a) of the Utilities Code. We note that section 182.052(a) provides that the utility may disclose a customer's utility usage 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 the city is a sole-source designated aquifer. Therefore, if the primary source of water for the city is not a sole-source designated aquifer, provided that the customers made timely requests for confidentiality, their utility usage information is 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, the city has the discretion to release the utility usage information, notwithstanding the customers' timely requests for confidentiality.

The submitted information also includes the customers' personal information, specifically their addresses and telephone numbers. If these customers, prior to the city's receipt of the instant request, elected to keep their personal information confidential, this information is confidential under section 182.052(a) and must be withheld under section 552.101 on that basis. If the customers did not timely request confidentiality for this information, such information is not confidential under section 182.052(a) and may not be withheld on that basis.

We note that the remaining submitted information includes account numbers. Section 552.136 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 information we have marked under section 552.136.

Finally, we note that the submitted information appears to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code, provided that the customers at issue made timely requests for confidentiality, the city must withhold: (1) the utility usage information provided the primary source of water for the city is not a sole-source designated aquifer and (2) the customers’ personal information. The city also must withhold the information we have marked under section 552.136 of the Government Code. The remaining submitted information must be released to the requestor, but any information protected by copyright must be released in accordance with copyright law.

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

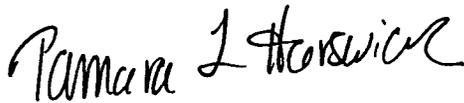
Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



Tamara L. Harswick  
Assistant Attorney General  
Open Records Division

TLH/krl

Ref: ID# 259499

Enc. Submitted documents

c: Mr. Don Morrison  
c/o Ms. Amanda Horst  
City Secretary  
City of Wolfe City  
P. O. Box 106  
Wolfe City, Texas 75496  
(w/o enclosures)