



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 10, 2007

Ms. Jessica B. Holoubek
Allen, Boone, Humphries, Robinson, L.L.P.
3200 Southwest Freeway, Suite 2600
Houston, Texas 77027

OR2007-03956

Dear Ms. Holoubek:

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# 276811.

The Harris County Municipal Utility District No. 165 (the "district"), which you represent, received a request for eight categories of information pertaining to a proposed strategic partnership agreement between the district and the city of Houston, including the names and addresses of all district members. You state that some of the requested information has been provided to the requestor, but claim that some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.¹

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 the following:

- (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

¹We assume that, to the extent any additional information responsive to the other requested categories of information existed when the district received the request for information, the district has released it to the requestor. If not, then the district must do so immediately. See Gov't Code §§ 552.006, 552.301, 552.302; Open Records Decision No. 664 (2000).

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). 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). A customer’s request for confidentiality must precede the utility’s receipt of the request for information. ORD 625 at 6. We also note that section 182.052 protects the personal information of natural persons only and not of artificial entities such as corporations, partnerships, or other business associations. *Id.* at 3-4.

You inform us that the addresses you have marked pertain to “customers who have requested that such information be kept confidential.” The district must withhold the address of the natural person in the submitted documents that we have marked under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code if the person requested confidentiality before the district received the request for information. The remaining address at issue appears to belong to a business association and not a natural person; therefore, the district may not withhold this address under section 552.101 in conjunction with section 182.052.

We note that the remaining information contains an account number. Section 552.136(b) of the Government Code 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.” The district must withhold the account number we have marked under section 552.136.

To conclude, the district must withhold the address we have marked under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code if the customer timely requested that this information be kept confidential. The district must also withhold the information marked under section 552.136 of the Government Code. The district must release the remaining information to the requestor.

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,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/jb

Ref: ID# 276811

Enc. Submitted documents

c: Mr. Kent A. Herzog
Sam-Ken Inc.
9344 Gosler Road
Scaly, Texas 77474
(w/o enclosures)