



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 17, 2007

Ms. Charlotte L. Staples
Taylor, Olson, Adkins, Sralla & Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2007-12091

Dear Ms. Staples:

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# 289264.

The City of Westworth Village (the "city"), which you represent, received a request for utility account information pertaining to specified addresses. 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 submitted information.

Section 552.101 of the Government Code 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:

(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). We note that the 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. 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. Water service is included in the scope of utility services covered by section 182.052. 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.

In this instance, the submitted information consists of utility records and customers’ personal information. None of the exceptions in section 182.054 appear to apply to the submitted information. We note, however, that section 182.052(a) provides that the utility may disclose a customer’s utility usage information or 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 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 at issue made timely requests for confidentiality, their address, utility usage and billing 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, and the customers timely requested that utility usage information be kept confidential, the city has the discretion to release the utility usage and billing information, notwithstanding the customers’ timely request for confidentiality. We also note, however, that some of the remaining utility information pertains to customers that are corporations, partnerships, or other business associations. Therefore, the city may not withhold any of the remaining information pertaining to corporations, partnerships, or other business associations under section 552.101 in conjunction with section 182.052 of the Utilities Code.

We note that some of the remaining submitted information contains account numbers. 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.”¹ Accordingly, the city must withhold the account numbers we have marked under section 552.136 of the Government Code. The remaining submitted information not subject to section 182.052 must be released 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

¹The Office of the Attorney General will raise a mandatory exception like section 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).

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,

A handwritten signature in black ink, appearing to read 'A. Meeseey', written in a cursive style.

Allan D. Meeseey
Assistant Attorney General
Open Records Division

ADM/eeg

Ref: ID# 289264

Enc. Submitted documents

c: Mr. Keith Taylor
c/o Ms. Charlotte L. Staples
6000 Western Place, Suite 200
Fort Worth, Texas 76107-4654
(w/o enclosures)