



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 9, 2007

Ms. Kelly E. Pagan
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2007-14778

Dear Ms. Pagan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 295793.

The City of Fort Worth (the "city") received a request for the water records of a certain customer. You have redacted a driver's license number from the submitted information. Section 552.130 of the Government Code excepts from required public disclosure a driver's license or permit issued by an agency of this state. Gov't Code § 552.130(a)(1). In Open Records Letter No. 2006-14726 (2006), this office determined that the city may withhold a driver's license number issued by an agency of this state under certain circumstances without the necessity of seeking an open records ruling. *See* Gov't Code § 552.301(a), (f); *see also* Open Records Decision No. 673 (2001) (establishing criteria for previous determinations). You claim that portions of the requested information are 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. 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 with a customer's personal information. None of the exceptions in section 182.054 appears to apply to the submitted information. You state and have provided proof that the submitted information is that of a customer who timely requested confidentiality for her utility account information under section 182.052. You do not indicate that any of the exceptions to confidentiality under section 182.054 applies in this instance. You also state that the primary source of water for the city's utility services is not a sole-source designated aquifer. Based on your representations and our review of the submitted information, we agree that the information you have highlighted is confidential under section 182.052 and is excepted from required public disclosure under section 552.101.

We note that the remaining information includes other confidential information. This office will raise on behalf of a governmental body exceptions that deem information confidential as these exceptions are mandatory and may not be waived. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions). The information includes the customer's account number. Section 552.136(b) of the Government Code states that "[n]otwithstanding any other provision of [the Act], 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(b); *see id.* § 552.136(a) (defining "access device"). The city must withhold the account number that we have marked under section 552.136.

In summary: (1) the city must withhold the information that you have highlighted under section 552.101 of the Government Code in conjunction with section 182.052 of the Utility Code; and (2) the city must withhold the marked account numbers under section 552.136 of the Government Code. The rest of the submitted information 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,

A handwritten signature in cursive script, appearing to read "Kay Hastings".

Kay Hastings
Assistant Attorney General
Open Records Division

KH/sdk

Ref: ID# 295793

Enc: Submitted documents

c: Ms. Cheryl Jacobson
Encore Realtors
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For Worth, Texas 76133
(w/o enclosures)