



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 22, 2009

Mr. Bill Glaspy  
Attorney at Law  
P.O. Box 850307  
Mesquite, Texas 75185-0307

OR2009-05345

Dear Mr. Glaspy:

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# 340567.

The Rice Water Supply and Sewer Service Corporation (the "corporation"), which you represent, received a request for all past due water meters on three specified dates and all water meters shut off on a specified date. We understand you to claim section 552.101 of the Government Code as an exception to disclosure for the submitted information. We have reviewed the submitted information and considered the submitted arguments.

Initially, you state the corporation does not keep information pertaining to water meter cut offs by date but the corporation "may be able to go back by hand to determine" this information. You also state "this would be a time consuming factor for [the corporation] to have to do with a limited staff." We note a governmental body may not decline to comply with the requirements of the Act on the ground of administrative inconvenience. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976) (cost or difficulty in complying with Act does not determine availability of information). The fact that it may be burdensome to provide the information at issue does not relieve a governmental body of its responsibility to comply with the Act. *Id.*; Open Records Decision No. 497 (1988). We note a governmental body is not required to produce the responsive information in the format requested, a list, or create new information to respond to the request for information. *See AT&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 676 (Tex. 1995); *Fish v. Dallas Indep. Sch. Dist.*, 31 S.W.3d 678, 681 (Tex. App.—Eastland, pet. denied); Attorney General Opinion

H-90 (1973); Open Records Decision Nos. 452 at 2-3, 342 at 3 (1982), 87 (1975). However, a governmental body must make a good faith effort to relate a request for information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). You have not submitted information pertaining to the requested water meter cut offs. Therefore, to the extent the corporation maintains documents that identify the water meters cut off on the specified date, those documents are responsive to the request and must be released to the requestor. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we must address the commission's obligations under the Act. Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the request (1) general 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. *See* Gov't Code § 552.301(e). The request reflects that it was received by the corporation on February 4, 2009. However, you did not submit a copy or representative sample of the requested information by the fifteen day deadline. Consequently, we find the corporation failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption the information is public and must be released. Information presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See 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). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Your claim under section 552.101 of the Government Code can provide a compelling reason for non-disclosure of information. Further, some of the submitted information may be subject to section and 552.136 of the Government Code, which is also a compelling reason for non-disclosure of information.<sup>1</sup> Accordingly, we will address the applicability of these exceptions to the submitted information.

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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. Section 552.101 encompasses the common-law right of privacy, which protects information that is 1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and 2) not of legitimate concern to the public. *See Indus. Found.*, 540 S.W.2d at 685. The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy, but there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See Open Records Decision Nos. 545 at 4 (1990)* (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities). Further, this office has found the names, addresses, and telephone numbers of members of the public are not excepted from required public disclosure under common-law privacy. *See Open Records Decision No. 455 (1987)* (the home addresses and telephone numbers of private citizens are generally not protected under the Act's privacy exceptions). You claim portions of the requested information are private. However, upon review, we find you have failed to explain how any portion of the submitted information constitutes highly intimate or embarrassing information that is not of legitimate public interest. Therefore, you may not withhold any portion of the submitted information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

The submitted information contains utility account numbers belonging to customers of the corporation. Section 552.136(b) 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"). This office has found that customer utility account numbers are access device numbers for purposes of section 552.136. Upon review, we find the utility account numbers we have marked in the submitted information are access device numbers for the purposes of section 552.136. Accordingly, the corporation must withhold these numbers under section 552.136.

In summary, the corporation must withhold the account numbers we have marked under section 552.136. As you have raised no further exceptions to disclosure, the remaining information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Olivia A. Maceo  
Assistant Attorney General  
Open Records Division

OM/eeg

Ref: ID# 340567

Enc. Submitted documents

c: Requestor  
(w/o enclosures)