



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 7, 2009

Mr. Patrick C. Phillips
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2009-06100

Dear Mr. Phillips:

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# 342422 (Fort Worth Public Information Request No. 2116-09).

The City of Fort Worth (the "city") received a request for information pertaining to code violations at a specified address. You state the city is releasing some of the requested information. You claim that portions of the submitted 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.

We note that the information you seek to withhold and a driver's license number have been redacted from the submitted documents. The city is authorized to redact certain Texas motor vehicle record information under section 552.130 of the Government Code pursuant to the previous determinations issued to the city in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). The city is not authorized, however, to redact the information you seek to withhold without requesting a decision. *See* Gov't Code § 552.301(a). As we are able, in this instance, to discern the nature of the information you have redacted without authorization, we will determine whether it is excepted from public disclosure. In the future, however, the city should refrain from redacting any information that it submits to this office in seeking an open records ruling. *See id.* §§ 552.301(e)(1)(D), .302.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses the doctrine of common-law privacy. Common-law privacy protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type 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 also found that some kinds of medical information or information indicating disabilities or specific illnesses is protected by common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). In addition, prior decisions of this office have found that personal financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy, but that 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. 600 (1992) (finding personal financial information to include choice of particular insurance carrier), 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), 523 (1989) (individual's mortgage payments, assets, bills, and credit history).

Upon review, we find that the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city must withhold the information we have marked pursuant to section 552.101 of the Government Code, in conjunction with common-law privacy. The city has failed to demonstrate, however, how the remaining information it has marked is highly intimate or embarrassing and not of legitimate public interest. Therefore, the city may not withhold any portion of the remaining information it has marked under section 552.101 in conjunction with common-law privacy.

We note that portions of the remaining information are subject to section 182.052 of the Utilities Code, which is also encompassed by section 552.101 of the Government Code. Section 182.052 provides in relevant part as follows:

- (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 names of customers are not included in the definition of personal information, and therefore are not confidential under section 182.052 of the Utilities Code. 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.

It does not appear that any of the exceptions in section 182.054 apply to the remaining information at issue. We understand that the primary source of water for the city's utility services is not a sole-source designated aquifer. In this instance, we are unable to determine whether the customers at issue elected confidentiality prior to the city's receipt of this request for information. *See* ORD 625 at 7. Nevertheless, if the customers at issue timely requested confidentiality for their personal and utility usage information, then the city must withhold the information we have marked, under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code. If the customers at issue did not timely request confidentiality, then no portion of the information at issue may be withheld under section 552.101 in conjunction with section 182.052 of the Utilities Code.

In summary, the city must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. If the customers at issue timely requested confidentiality for their personal and utility usage information, then the city must withhold the information we have marked, under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code. 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, 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,

A handwritten signature in black ink that reads "Jennifer Luttrall". The signature is written in a cursive style with a large initial "J".

Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/eeg

Ref: ID# 342422

Enc. Submitted documents

c: Requestor
(w/o enclosures)