



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 9, 2009

Mr. Roger Polly  
President  
Randolph Water Supply Corporation  
P.O. Box 24  
Randolph, Texas 75475

OR2009-07901

Dear Mr. Polly:

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# 345622.

The Randolph Water Supply Corporation (the "corporation") received a request for (1) its by-laws; (2) the minutes from a January 12, 2009 meeting; (3) information relating to the removal of the requestor from the office of vice president; and (4) "a current copy of all members." We are informed that the corporation has released the requested by-laws, minutes, and information relating to the requestor's removal from office. The corporation seeks to withhold its member list, which it has submitted for our review. We have considered the corporation's arguments and reviewed the submitted information.

The corporation contends that the requestor should be denied access to the requested member list because he "wants the list of members for purely personal reasons" and "has no reason to need this information other than for personal reasons not pertaining to the good of the community." The corporation also informs us that individual members of the corporation do not want their information released to the requestor. With regard to these concerns, we note that a requestor's motives are irrelevant to the question of whether requested information may be withheld from public disclosure. *See* Gov't Code § 552.222(a)-(b); Open Records Decision No. 542 at 4 (1990). A governmental body must release the information to which a requestor seeks access unless the information falls within the scope of an exception to public disclosure under the Act. *See* Gov't Code § 552.221; Open

Records Decision No. 664 (2000). We note that a governmental body is not responsible for the use that may be made of information that it releases to the public. *See* Gov't Code § 552.204; Open Records Decision No. 508 at 3 (1988) (use that may be made of information does not control whether it falls within exception to disclosure).

Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to determine whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301(a). Section 552.301(b) requires the governmental body to ask for the attorney general's decision and claim its exceptions to disclosure not later than the tenth business day after the date of its receipt of the written request for information. *See id.* § 552.301(b). Section 552.301(e) requires the governmental body to submit to this office, not later than the fifteenth business day after the date of its receipt of the request, (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the request for information; (3) a signed statement of the date on which the governmental body received the request or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples if the information is voluminous. *See id.* § 552.301(e)(1)(A)-(D). Section 552.302 of the Government Code provides that if a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ).

We understand that the corporation received this request for information on or about January 20, 2009. The corporation requested this decision by United States Mail postmarked April 1 and submitted the requested member list to this office on June 1. Thus, the corporation did not comply with section 552.301 in requesting this decision, and therefore the submitted information is presumed to be public under section 552.302. This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). We understand the corporation to claim that some or all of the submitted information is confidential. Accordingly, we will determine whether any of the information at issue must be withheld on that basis.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."<sup>1</sup> This exception encompasses constitutional and common-law privacy. Constitutional privacy protects two kinds of interests. *See* Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987); *see also Whalen v. Roe*, 429 U.S. 589, 599-600 (1977). The first

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<sup>1</sup>Unlike other exceptions to disclosure, this office will raise section 552.101 on behalf of a governmental body, because the Act prescribes criminal penalties for the release of confidential information. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 325 at 2 (1982).

is the interest in independence in making certain important decisions related to the "zones of privacy," pertaining to marriage, procreation, contraception, family relationships, and child rearing and education, that have been recognized by the United States Supreme Court. See Open Records Decision No. 455 at 3-7 (1987); see also *Fadjo v. Coon*, 633 F.2d 1172 (5<sup>th</sup> Cir. 1981). The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. See ORD 455 at 6-7; see also *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5<sup>th</sup> Cir. 1985). This aspect of constitutional privacy balances the individual's privacy interest against the public's interest in the disclosure of information. See ORD 455 at 7. Constitutional privacy is reserved for "the most intimate aspects of human affairs." *Id.* at 8 (quoting *Ramie*, 765 F.2d at 492).

Common-law privacy protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. See *Indus. Found. v. Tex. Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common-law privacy encompasses the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. See *id.* at 683 (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). This office has determined that other types of information also are private under section 552.101. See Open Records Decision No. 659 at 4-5 (1999) (summarizing information that attorney general has determined to be private).

We understand the corporation to contend that release of the submitted information would be an invasion of its members' privacy. We note that the submitted member list contains the members' names, billing addresses, telephone numbers, and route number. This office has concluded that public disclosure of an individual's name, home address, and telephone number is not an invasion of privacy. See Open Records Decision No. 554 at 3 (1990); see also Open Records Decision No. 455 at 7 (1987) (home addresses and telephone numbers do not qualify as "intimate aspects of human affairs"). We also have stated that an expectation of privacy on the part of an individual who provides information to a governmental body does not permit the information to be withheld under section 552.101. See Open Records Decision Nos. 479 at 1 (1987) (information is not confidential simply because party that submitted the information anticipated or requested confidentiality), 180 at 2 (1977) (information not excepted from disclosure solely because the individual furnished it with the expectation that access to it would be restricted). We therefore conclude that the corporation may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with constitutional or common-law privacy.

Section 552.101 also encompasses information that other statutes make confidential. The corporation may be required to withhold some of the submitted information under section 552.101 in conjunction with section 182.052 of the Utilities Code, which provides in 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, but does not include the individual's name. *See id.* § 182.051(4); *see also* Open Records Decision No. 625 (1994) (construing statutory predecessor). We note that a post office box number is not an address for the purposes of section 182.052. Moreover, because it is intended to protect the safety and privacy of individual customers, section 182.052 is applicable only to information pertaining to natural persons and does not protect information relating to business, governmental, and other artificial entities. *See* ORD 625 at 4-5 (in context of Util. Code § 182.051(4), "individual" means only natural persons and does not include artificial entities). 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, there is no indication that any of the exceptions listed in section 182.054 is applicable. Therefore, the corporation must withhold the physical addresses and telephone numbers of members who are natural persons under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code to the extent that such members made written requests for the confidentiality of their addresses and telephone numbers prior to the corporation's receipt of this request for information. *See* ORD 625 at 7 (character of requested information as public or not public must be determined at time request for information is made).

We note that section 552.136 of the Government Code is applicable to the members' account numbers.<sup>2</sup> Section 552.136(b) provides that "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected,

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<sup>2</sup>This office also will raise section 552.136 on behalf of a governmental body, as this exception is 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).

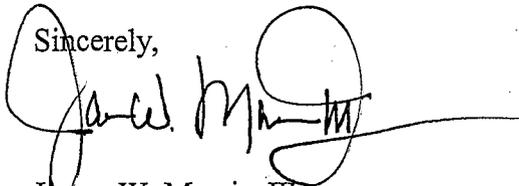
assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). The corporation must withhold the account numbers of all members under section 552.136.

In summary: (1) the corporation must withhold the addresses and telephone numbers of members who are natural persons under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code to the extent that such members made written requests for the confidentiality of their addresses and telephone numbers prior to the corporation’s receipt of this request for information; and (2) the corporation must withhold the account numbers of all members under section 552.136. The rest of the submitted 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,

A handwritten signature in black ink, appearing to read "James W. Morris, III", with a long horizontal line extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/cc

Ref: ID# 345622

Enc: Submitted documents

c: Requestor  
(w/o enclosures)