



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 7, 2009

Ms. Yolanda Coroy
Counsel for the City of South Houston
2211 Norfolk, Suite 735
Houston, Texas 77098

Mr. Dick H. Gregg, Jr.
Gregg & Gregg, P.C.
16055 Space Center Boulevard
Houston, Texas 77062

OR2009-09341

Dear Ms. Coroy and Mr. Gregg:

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# 348183.

The City of South Houston (the "city"), which you represent, received a request for the name, address, and classification (residential or commercial) of all city water and sewer ratepayers who are physically located outside city limits. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the city's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. Gov't Code § 552.301(b). Additionally, within fifteen days of receiving the request, the governmental body must submit to this office several items, including a copy of the specific information requested or representative samples thereof, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). You explain that the city received the request for information on April 17, 2009; however, you did not claim exception under section 552.101 of the Government Code or submit a copy of the specific information requested until July 2, 2009. Thus, the city failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released; the governmental body can overcome this presumption only by demonstrating a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). A compelling reason generally exists when third-party interests are at stake or when the information at issue is confidential under other law. *See* Open Records Decision No. 150 (1977). Although you claim an exception to disclosure under section 552.103 of the Government Code, that section is discretionary, protects a governmental body's interests, and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Thus, your claim under section 552.103 does not provide a compelling reason for non-disclosure, and the city may not withhold the information at issue under that exception. However, section 552.101 can provide a compelling reason for non-disclosure; we will accordingly consider your arguments under this section in conjunction with section 182.052 of the Utilities Code.¹

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 information made confidential by other statutes, including section 182.052 of the Utilities Code, which 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) includes an individual's address, telephone number, or social security number, but does not include the

¹Although you also raise section 182.051 of the Utilities Code, this section is a set of definitions that apply to section 182.052. Thus, section 182.052 encompasses your entire argument under the Utilities Code.

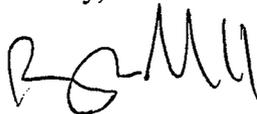
individual's name. *See id.* § 182.051(4); *see also* Open Records Decision No. 625 (1994) (construing statutory predecessor). We note that a post office box number is not an address for the purposes of section 182.052. Moreover, because section 182.052 is intended to protect the safety and privacy of individual customers, this statute 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 city must withhold the physical addresses of customers 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 information prior to the city'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). To the extent that such members did not make written confidentiality requests prior to the city's receipt of this request, the city must release these members' addresses. Regardless of any confidentiality requests, the city also must release all of the submitted customer names, as well as the addresses of all listed customers that are business, governmental, or other artificial entities.

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,



Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/rl

Ref: ID# 348183

Enc. Submitted documents

cc: Requestor
(w/o enclosures)