



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 2, 2009

Mr. Jeffrey T. Ulmann
Ms. Paige H. Saenz
Assistant City Attorney
Knight & Partners
223 West Anderson Lane, Suite A-105
Austin, Texas 78752

OR2009-12397

Dear Mr. Ulmann and Ms. Saenz:

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# 354187.

The City of Kyle (the "city"), which you represent, received two requests for the city's top ten residential and commercial water users from May 2008 to June 2009. You state the city will release the information relating to the commercial water users. You claim the submitted information is excepted from disclosure under sections 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹ We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information).

Initially, we note that in the requestor's second request for information, which you inform us was received on July 7, 2009, the requestor asks for the "top ten list" of residential water

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

users. Thus, we find Exhibit B, which consists of a list of the top residential water users in the city, to be responsive to the request. However, Exhibits C, D, and E are not responsive to the instant request as they consist of service applications and elections for confidentiality. The city need not release non-responsive information in response to this request, and this ruling will not address that information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W. 2d 266 (Tex. Civ. App. — San Antonio 1978, writ dism'd).

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). Water service is included in the scope of utility services covered by section 182.052. *Id.* § 182.051(3). “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 a 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.

You indicate that the account information you have marked in orange in Exhibit B is confidential under section 182.052. You do not indicate that any of the exceptions to confidentiality under section 182.054 apply in this instance. *See* Util. Code § 182.054. Based on your representations and our review, we agree that, with the exception of customer names, the city must withhold the information we have marked in Exhibit B under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code. Although you claim the customer names should also be withheld because release of the names would reveal utility usage, we disagree. You have failed to demonstrate how release of the customer names in this instance would reveal the volume or units of utility usage. Therefore, the customer names must be released.

You also inform us the city is unable to locate for two of the customers at issue the application for utility services on which customers may elect confidentiality. Therefore, we must rule conditionally. If the city determines these customers elected to keep their utility usage information confidential prior to the date the city received the present request, then this information is confidential under section 182.052 of the Utilities Code and must be withheld under section 552.101 of the Government Code. *See* Open Records Decision No. 625 (1994) (construing statutory predecessor). Otherwise, this information is not confidential under section 182.052 of the Utilities Code and may not be withheld under section 552.101 of the Government Code on that basis. You further inform us that some of the customers whose water usage is at issue did not elect to keep their utility information confidential until after the instant request was received. Therefore, we find that the city may not withhold these customers' information under section 552.101 in conjunction with section 182.052. We note that if the primary source of water for the city's utility is a sole-source designated aquifer, the city has the discretion to release information relating to a customer's volume or units of utility usage or amounts billed to or collected from the individual for utility usage. *Id.* § 182.052(a).

The remaining information contains account numbers subject to section 552.136 of the Government Code.² Section 552.136 provides that "[n]otwithstanding any other provision of this chapter, 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 also* § 552.136(a) (definition of "access device number" includes account numbers). The city must withhold the account numbers we have marked pursuant to section 552.136 of the Government Code.

In summary, the city must withhold the information we have marked in Exhibit B under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code. The city must withhold the account numbers we have marked in Exhibit B under section 552.136 of the Government 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

²The Office of the Attorney General will raise a mandatory exception like section 552.136 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Pam Wissemann".

Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/jb

Ref: ID# 354187

Enc. Submitted documents

c: Requestor
(w/o enclosures)