



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 7, 2011

Mr. James D. Parker
Knight & Partners
For the City of Bartlett
233 West Anderson Lane, Suite A-105
Austin, Texas 78752

OR2011-04845

Dear Mr. Parker:

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# 413954.

The City of Bartlett (the "city"), which you represent, received seven requests from the same requestor for the following information: (1) the minutes from two specified city council meetings; (2) all write-ups/complaints/reprimands for current city employees; (3) all employee grievances for three named employees and the resolutions of those grievances; (4) information relating to past due utilities bills and utility customers who were "yellow tagged" or disconnected for the last six months; (5) an offense report relating to the theft of a specified water meter or, in the alternative, the work order for the same meter's removal; (6) the purpose of the city attorney's presence at a specified city council meeting, who authorized his presence at the meeting, and what was paid for his presence; (7) and the video recording relating to a specified incident and the brand, model number, year of manufacture, and invoice for the purchase of the camera used to record the video. You state you have released a list of overdue or past utility accounts and responsive city attorney billing records. You claim that a portion of the request requires the city to answer questions. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.108 of the Government Code. We have considered your arguments and reviewed the submitted representative samples of information.¹

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.

Initially, we note that you have not submitted information responsive to the requests for the meeting minutes, employee grievances, offense reports or work orders relating to the missing water meter, or to the camera, nor do you state you have released such information, or that it does not exist. To the extent information responsive to these portions of the requests existed on the date the city received the requests, we assume the city has released it. *See* 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); *see also* Gov't Code § 551.002 (minutes and tape recordings of open meeting are public records and shall be available for public inspection and copying upon request). If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301, .302.

You assert that the requests pertaining to the city attorney's presence at the city council meeting and the authorization for his presence would require the city to answer questions. The Act does not require a governmental body to answer general questions, perform legal research, or create information that did not exist when the request was received. *See Econ. Opportunities, Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good-faith effort to relate a request to any responsive information that is within its possession or control. Open Records Decision No. 561 at 8-9 (1990). Therefore, while the city is not required to create a document in response to any of the questions at issue, documents from which this information may be derived would be responsive to this request. We assume the city has made a good-faith effort to relate the requestor's questions to responsive information.

Next, you inform us that the requested video recording was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2010-17158 (2010). In the prior ruling, this office determined the video recording was excepted from disclosure pursuant to section 552.108(a)(1) of the Government Code. We conclude that, as we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, the city may continue to rely on that ruling as a previous determination and withhold the requested video recording in accordance with Open Records Letter No. 2010-17158. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). With respect to the submitted information that was not the subject of this prior ruling, we will consider your arguments against disclosure.

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 individual's name. *See id.* § 182.051(4); *see also* Open Records Decision No. 625 (1994) (construing statutory predecessor). 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 section 182.051(4) of the Utility Code, "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.

You seek to withhold the personal information of utility customers who have requested their account information be kept confidential from the submitted list of utility accounts in Exhibit C under section 181.052 of the Utility Code. We note this list does not contain any "personal information" for purposes of section 181.052 of the Utility Code. *See id.* § 181.051(4) (defining personal information as an individual's address, telephone number, or social security number). However, the submitted list does contain information pertaining to the amounts billed to each customer. You have not submitted the customer confidentiality election forms for the accounts at issue. Also, you do not indicate whether the city's primary source of water is a sole-source designated aquifer. Nevertheless, if the city's primary source of water is not a sole-source designated aquifer and if the customers at issue requested confidentiality under section 182.052(b) before the city received the request for information, the city must generally withhold the billing information we have marked pursuant to section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code. If the city's primary source of water is a sole-source designated aquifer, then the city has discretion to release the information at issue, notwithstanding the customers' requests for confidentiality. We note, however, that some of the information at issue may belong to businesses or other artificial entities and not natural persons. The city may not withhold the billing information of any business or other artificial entity. The remaining information consists of utility account numbers. This information is not confidential under

section 182.052, and the city may not withhold any portion of it under section 552.101 on that basis.

Section 552.136 of the Government Code 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.”² Gov’t Code § 552.136(b). An access device number is one that may be used to “(1) obtain money, goods, services, or another thing of value; or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* § 552.136(a). Upon review, we find the utility account numbers in Exhibit C constitute access device numbers for purposes of section 552.136. Thus, the city must withhold the account numbers we have marked under section 552.136.

You seek to withhold the submitted letters of counseling under section 552.102(a) of the Government Code. Section 552.102(a) excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). Upon review, we find none of the letters of counseling are excepted under section 552.102(a) of the Government Code. Accordingly, none of the letters of counseling may be withheld on that basis.

In summary, the city may continue to rely on Open Records Letter No.2010-14158 as a previous determination and withhold the previously ruled upon video recording in accordance with that ruling. If the city’s primary source of water is not a sole-source designated aquifer and if the customers at issue requested confidentiality under section 182.052(b) before the city received the request for information, the city must withhold the billing information we have marked in Exhibit C pursuant to section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code. The city, however, may not withhold this marked information if it pertains to a business or other artificial entity. The city must withhold the utility account numbers we have marked in Exhibit C under section 552.136 of the Government Code. The letters of counseling 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,

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

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, toll free at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Kate Hartfield". The signature is written in a cursive style with a large, sweeping initial "K".

Kate Hartfield
Assistant Attorney General
Open Records Division

KH/em

Ref: ID# 413954

Enc. Submitted documents

c: Requestor
(w/o enclosures)