



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 14, 2011

Mr. Warren M.S. Ernst  
Chief, General Counsel Division  
City of Dallas  
1500 Marilla Street, Room 7BN  
Dallas, Texas 75201

OR2011-10025

Dear Mr. Ernst:

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# 424106.

The City of Dallas (the "city") received a request for account numbers, dates of service connection or disconnection, names, telephone numbers, service addresses, mailing addresses, and commercial or residential status for city water utility customers and "a record layout showing field descriptions of requested data." You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, you acknowledge, and we agree, the city failed to comply with the procedural requirements of section 552.301 of the Government Code. A governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex.

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<sup>1</sup>We assume 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 those records contain substantially different types of information than that submitted to this office.

App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). The presumption the information is public under section 552.302 can generally be overcome by demonstrating the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). Section 552.101 can provide a compelling reason to overcome this presumption; therefore, we will consider your arguments under this exception.

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. You claim the submitted information is excepted from disclosure under section 552.101 because the public release of the information is inconsistent with the mandate in part 681 of title 16 of the Code of Federal Regulations (the “Red Flags Rule”). *See* 16 C.F.R. pt. 681 (2009); *see also* 15 U.S.C. § 1681m(e)(1)(A), (B) (requiring federal banking agencies, National Credit Union Administration, and Federal Trade Commission (the “commission”) to establish guidelines regarding identity theft with respect to account holders and to prescribe regulations requiring financial institutions and creditors to establish reasonable policies and procedures for implementing those guidelines). Section 681.1 requires financial institutions and creditors that are subject to the commission’s enforcement of the Fair Credit Reporting Act and that offer or maintain “covered accounts” to develop and implement a written identity theft prevention program.<sup>2</sup> 16 C.F.R. § 681.1(a), (d)(1). The purpose of such a program is to “to detect, prevent, and mitigate identity theft in connection with the opening of a covered account or any existing covered account.” *See id.* pt. 681, App. A (providing guidelines for financial institutions and creditors to formulate and maintain programs satisfying requirements of section 681.1). For purposes of the Red Flags Rule, a “creditor” has the same meaning as in section 1681a(r)(5) of title 15 of the United States Code and includes a utility company. *Id.* § 681.1(b)(5); *see also* 15 U.S.C. §§ 1681a(r)(5) (“creditor” has same meanings as in 15 U.S.C. § 1691a), 1691a(e) (defining “creditor” as any person who regularly extends, renews, or continues credit). A “covered account” means an account which “a financial institution or creditor offers or maintains, primarily for personal, family, or household purposes, that involves or is designed to permit multiple payments or transactions, such as a credit card account, mortgage loan, automobile loan, margin account, cell phone account, utility account, checking account, or savings account[.]” 16 C.F.R. § 681.1(b)(3)(i).

You state the city has adopted an identity theft prevention program pursuant to the Red Flags Rule. This program, a copy of which you have provided this office, defines “identifying information” as “any name or number that may be used, alone or in conjunction with any other information, to identify a specific person,” including an individual’s name, address, or telephone number. However, you have not directed our attention to any provision in the program or the Red Flags Rule that makes confidential the information at issue. *See* Gov’t Code § 552.101 (excepting information made confidential by law). Furthermore, you have

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<sup>2</sup>Although you cite to section 681.2 of title 16 of the Code of Federal Regulations, we note section 681.1 is the correct section for the substance of your argument.

not explained how section 681.1 provides the city with the authority to make any information confidential. A governmental body may not promulgate a rule that designates information as being confidential, so as to bring the information within the scope of section 552.101 of the Government Code, unless the governmental body has been given specific statutory authority to do so. *See* Open Records Decision Nos. 594 at 2-3 (1991) (city ordinance cannot operate to make information confidential when not excepted by Act), 263 (1981) (city ordinance may not conflict with Act); *see also Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976) (agency rule may not make information confidential in circumvention of Act); *City of Brookside Village v. Comeau*, 633 S.W.2d 790, 796 (Tex. 1982) (local ordinance conflicting with or inconsistent with state legislation not permissible). After considering your arguments and reviewing the city's program and the information at issue, we conclude you have not demonstrated how the Red Flags Rule or the program makes the submitted information confidential. *See* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express, and confidentiality requirement will not be implied from statutory structure), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to public). Therefore, we conclude the city may not withhold any information under section 552.101 of the Government Code in conjunction with either the Red Flags Rule or the city's identity theft prevention program.

Section 552.101 also encompasses 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). Water service is included in the scope of utility services covered by section 182.052. *Id.* § 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. 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).

In this instance, you state none of the exceptions listed in section 182.054 is applicable. You state the information in Exhibit B relates to city utility customers who timely requested confidentiality under section 182.052. You state the information in Exhibit C relates to city utility customers who did not timely request confidentiality under section 182.052. Accordingly, the city must withhold the customers’ addresses and telephone numbers from Exhibit B under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code. *See* ORD 625 at 7 (character of requested information as public or not public must be determined at time request for information is made). However, the city may not withhold this information from Exhibit C under section 552.101 on that basis.

We note the submitted information contains customer utility account numbers subject to section 552.136 of the Government Code.<sup>3</sup> 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). 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, and includes an account number. *Id.* § 552.136(a). Upon review, we find these customer utility account numbers are access device numbers for purposes of section 552.136. Accordingly, the city must withhold the customer utility account numbers under section 552.136 of the Government Code.

In summary, the city must withhold customer addresses and telephone numbers from Exhibit B under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code. The city must withhold utility account numbers from the submitted information under section 552.136 of the Government Code. The city must release the remaining information.

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,

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<sup>3</sup>The 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,



Mack T. Harrison  
Assistant Attorney General  
Open Records Division

MTH/em

Ref: ID# 424106

Enc. Submitted documents

c: Requestor  
(w/o enclosures)