



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 9, 2012

Mr. Anthony S. Corbett
Freeman & Corbett
8500 Bluffstone Cove, Suite B-104
Austin, Texas 78759

OR2012-05052

Dear Mr. Corbett:

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# 450005.

The Barton Creek Water Supply Corporation (the “corporation”), which you represent, received a request for the account name, mailing address, and total amount of water used by each account for July and August 2011 for residential water customers, the corporation’s most recent drought management and water conservation plans, and any document or record calculating or estimating the per capita water usage in the corporation’s service area for the last three years. You state the drought management and water conservation plans have been or will be released to the requestor. You state the corporation does not have information calculating or estimating per capita water usage.¹ You claim the remaining requested 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.²

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

¹We note the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism’d); Open Records Decision No. 452 at 3 (1986).

²We 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.

Code § 552.101. Section 552.101 encompasses information that other statutes make confidential, such as section 182.052 of the Utilities Code. This section 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. *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. *See* Util. Code § 182.051(3).

You seek to withhold the requested customer addresses and usage information. You state the primary source of water for the corporation's utility services is not a sole-source designated aquifer. You do not indicate any of the exceptions to confidentiality under section 182.054 of the Utilities Code apply in this instance. You state the customers to whom the submitted information relates have requested the corporation keep their personal and usage information confidential. Based on your representations and our review, we find the corporation must withhold the customer addresses and usage information under section 552.101 of the Government Code in conjunction with section 182.052(a) of the Utilities Code.

Section 552.101 also protects information made confidential by federal statutes. You to seek to withhold customer names under section 552.101 in conjunction with section 1681m of title 15 of the United States Code 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 Rules"). *See* 16 C.F.R. pt. 681 (2009); *see also* 15 U.S.C. § 1681m(e) (requiring establishment of guidelines regarding identity theft with respect to account holders and 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 Federal Trade 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. 16 C.F.R. § 681.1(a), (d)(1). Section 1681m addresses the duties required of users of consumer reports when taking adverse actions based on the information in these reports. *See* 15 U.S.C. § 1681m.

You state the corporation has developed a "Red Flag Program" as its identity theft prevention program. This program, a copy of which you have provided, 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." Although you rely on section 1681m to withhold the customer names, you acknowledge the provision "does not make account names expressly confidential." Statutory confidentiality requires express language making information confidential or stating information shall not be released to the public. A confidentiality requirement will not be implied from statutory structure. *See* Open Records Decision Nos. 658 at 4 (1998), 478 at 2 (1987). Therefore, we conclude the corporation may not withhold the customer names under section 552.101 of the Government Code in conjunction with section 1681m of title 15 of the United States Code.

In summary, the corporation must withhold the addresses and usage information of customers who have timely requested such information remain confidential under section 552.101 of the Government Code in conjunction with section 182.052(a) of the Utilities 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 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,



Jessica Marsh
Assistant Attorney General
Open Records Division

JM/em

Ref: ID# 450005

Enc. Submitted documents

c: Requestor
(w/o enclosures)