



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 10, 2012

Ms. Sharlene N. Collins
Armbrust & Brown, PLLC
100 Congress Avenue, Suite 1300
Austin, Texas 78701-2744

OR2012-05153

Dear Ms. Collins:

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# 450441.

Travis County Municipal Utility District Nos. 3, 4, 5, and 8 (the "districts"), which you represent, received a request for (1) a copy of the account name, mailing address, and total amount of water used during July and August of 2011 for all residential water customers; (2) the most recent drought management plan and water conservation plan; and (3) any record calculating or estimating the per capita water use of the districts' service areas.¹ You state the district released information responsive to items two and three of the request. You claim some of 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.²

¹We note the districts sought and received clarification of the request. *See* Gov't Code § 552.222(b) (stating if information requested is unclear or large amount has been requested, governmental body may ask requestor to clarify or narrow request).

²We 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.

Initially, we note the requestor seeks only the account name, mailing address, and total amount of water used during July and August of 2011 for all residential water customers. Accordingly, the remaining submitted information is not responsive to the instant request. The districts need not release non-responsive information in response to this request, and this ruling will not address that information.

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 customer names are 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 Rules”). *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. 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 Rules, 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 districts have adopted an identity theft prevention program pursuant to the Red Flags Rules. However, you have not directed our attention to any provision in the Red Flags Rules that makes confidential the information at issue. Therefore, you have not demonstrated how the Red Flags Rules make the customer names 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). Moreover, you have not explained how section 681.1 provides the districts with the authority to make any information confidential. *See* Gov’t Code § 552.101 (excepting information made confidential by law).

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). Therefore, we conclude the districts may not withhold the customer names under section 552.101 of the Government Code in conjunction with either the Red Flags Rules or the districts's identity theft prevention program.

Section 552.101 of the Government Code 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). Water service is included in the scope of utility services covered by section 182.052. *Id.* § 182.051(3). As you acknowledge, "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). However, 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). Section 182.054 of the Utilities Code provides six exceptions to the disclosure prohibition found in section 182.052. *See* Util. Code § 182.054.

You state the primary source of water for the districts' utility services is not a sole-source designated aquifer. There is no indication any of the exceptions listed in section 182.054 is applicable to the responsive information. You seek to withhold the responsive personal and water usage information of utility customers who have requested their account information be kept confidential under section 181.052 of the Utility Code. Accordingly, we find the districts must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code. We note one of the customers listed in the submitted information is a commercial entity. Therefore, the districts may not withhold any of the responsive information pertaining to this customer under section 552.101 in conjunction with section 182.052. Consequently, the remaining responsive 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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/ag

Ref: ID# 450441

Enc. Submitted documents

c: Requestor
(w/o enclosures)