



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 30, 2012

Ms. Jessica Scott
For City of Rollingwood
Scanlan, Buckle & Young, P.C.
602 West 11th Street
Austin, Texas 78701

OR2012-06148

Dear Ms. Scott:

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# 452152.

The City of Rollingwood (the "city"), which you represent, received a request for (1) the account name, mailing address, and amount of water used by each residential water customer during a specified time period; (2) copies of the most recent drought management and water conservation plans; and (3) information containing the per capita water use for the last three years.¹ You state you have released some information relating to category one of the request. You claim portions of the requested information are 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

¹You state you sought and received clarification of the request for information. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if a large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date the request is clarified or narrowed).

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 that those records contain substantially different types of information than that submitted to this office.

Initially, you state some of the submitted information is not responsive to the instant request. This ruling does not address the public availability of non-responsive information, and the city is not required to release non-responsive information in response to this request.

Next, you have not submitted any information responsive to categories two and three of the request. To the extent information responsive to these portions of the request existed on the date the city received the request, we assume you have 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). If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

We note, and you acknowledge, the city failed to meet the deadlines prescribed by section 552.301 of the Government Code in requesting an open records decision from our office. Gov't Code § 552.301(b), (e). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 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, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). The presumption information is public under section 552.302 can 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). Because section 552.101 can provide a compelling reason for non-disclosure, we will consider the applicability of this exception to the information at issue.

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, such as 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). “Personal information” under section 182.052(a) means 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). Section 182.054 of the Utilities Code provides six exceptions to the disclosure prohibition found in section 182.052. *See* Util. Code § 182.054.

Section 182.052(b) provides the means by which a customer may request confidentiality for his or her personal information, certain utility usage information, and information relating to the amounts billed to or collected from the customer for utility usage. *See id.* § 182.052(a), (b). You state, and provide documentation demonstrating, the customer whose information is at issue requested confidentiality for personal information prior to the date the city received the request for information. However, we note, and you acknowledge, the city’s election form permits a customer to request confidentiality for only the customer’s “address, telephone number or social security number[.]” and it does not provide a means for a customer to request confidentiality for his or her water usage information. Although you seek to withhold the customer’s usage information under section 182.052(a) of the Utilities Code, we find, because the customer did not request confidentiality for this information, the city may not withhold it on that basis. *See* Open Records Decision No. 478 at 2 (1987) (language of confidentiality statute controls scope of protection). Accordingly, the city must withhold only the address of the customer whose information is at issue under section 552.101 of the Government Code in conjunction with section 182.052(a) of the Utilities Code.

Finally, the requestor states he prefers to receive copies of the requested information in electronic format. Section 552.228 of the Government Code requires a governmental body to provide a copy of the public information in the requested medium if it has the technological ability to do so without the purchase of software or hardware. *See* Gov’t Code § 552.228(b)(1), (2). Accordingly, if the city has the technological capability to provide the requested information to the requestor in the requested format, it must do so; however, if the city does not have the technological capability, it must provide the information at issue in another medium acceptable to the requestor. *See id.* § 552.228(c).

In summary, the city must withhold the address of the customer whose information is at issue under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code. 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,



Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV/dls

Ref: ID# 452152

Enc. Submitted documents

c: Requestor
(w/o enclosures)