



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 27, 2012

Mr. Marvin C. Gregory III  
City Administrator  
City of River Oaks  
4900 River Oaks Boulevard  
River Oaks, Texas 76114

OR2012-19051

Dear Mr. Gregory:

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# 472212.

The City of River Oaks (the "city") received a request for the water usage amounts at a specified address for the past ten years. You state the city does not possess water usage amount records for years preceding 2010.<sup>1</sup> You claim that 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 information.

Initially, we must address the city's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of the receipt of the request: (1) written comments stating why the governmental body's claimed exceptions apply to the information

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by the governmental body or on its behalf. See *Economic 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), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples if the information is voluminous. *See* Gov't Code § 552.301(e)(1). You state the city received the request for information on September 6, 2012. Because you do not inform this office the city was closed for business any of the days at issue, we find the city's fifteen-business-day deadline was September 27, 2012. However, the requested information was submitted to this office in an envelope postmarked September 28, 2012. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Thus, the city failed to comply with the requirements mandated by section 552.301(e).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released unless the governmental body overcomes this presumption by demonstrating a compelling reason to withhold the information. *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); Open Records Decision No. 630 (1994). A compelling reason generally exists when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). However, section 552.101 of the Government Code can provide a compelling reason to withhold information. Additionally, we note the submitted information includes information subject to sections 552.130 and 552.136 of the Government Code, which also provide compelling reasons that overcome the presumption of openness.<sup>2</sup> Accordingly, we will consider the applicability of sections 552.101, 552.130, and 552.136 to the submitted 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. This section encompasses information protected by other statutes, such as section 182.052 of the Utilities Code, which 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

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

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.

(c) A government-operated utility shall include with a bill sent to each customer:

...

(3) a form by which the customer may request confidentiality by marking an appropriate box on the form and returning it to the government-operated utility.

Util. Code § 182.052(a)-(b), (c)(3). 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) 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). A customer's request for confidentiality must precede the utility's receipt of the request for information. ORD 625 at 6.

The submitted information consists of water utility records of residential customers. 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* Util. Code § 182.052(a), (b). You provide a copy of the city's election form as supporting documentation and state some of the customers whose information is at issue requested confidentiality for their personal, usage, and billing information prior to the date the city received the request for information. However, upon review we find the city's election form permits a customer to request confidentiality for only the customer's "address, telephone number [and] social security number," and it does not provide a means for a customer to request confidentiality for his or her usage or billing information. Accordingly, the city may not withhold any of the customers' usage and billing information on this basis. *See* Open Records Decision No. 478 at 2 (1987) (language of confidentiality statute controls scope of protection).

We note the submitted information includes the requestor's personal information. Section 182.052(d) of the Utilities Code states that "[a] customer may rescind a request for confidentiality by providing the government-operated utility written permission to disclose personal information." *Id.* § 182.052(d). It is implicit from the language of this section that the city is not prohibited from releasing the customer's own personal information if the customer provides permission to do so. *See id.*; *see also id.* § 182.054(5) (personal information may be released to person for whom the customer has contractually waived confidentiality for personal information). As the requestor's written request encompasses the requestor's personal information, we conclude the requestor has provided written permission for the city to disclose the requestor's personal information in this situation. Thus, because the city has permission to do so, it must release the requestor's personal information.

As noted above, you state some of the customers other than the requestor whose information is at issue requested confidentiality for their personal information prior to the date the city received the request for information. You submit a completed confidentiality request for one of the customers, but we are not able to tell which of the remaining customers also requested confidentiality. As such, we rule conditionally. To the extent that the customers other than the requestor whose information is at issue did not make written confidentiality requests prior to the city's receipt of the present request for information, the city may not withhold the personal information of such customers under section 552.101 in conjunction with section 182.052. To the extent the customers at issue made written requests for confidentiality prior to the city's receipt of this request for information, the city must withhold the customers' personal information, which we have marked, under section 552.101 in conjunction with section 182.052. None of the remaining information that does not pertain to the requestor constitutes personal information for the purposes of section 182.052. As such, none of the remaining information may be withheld under section 552.101 on this basis.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a)(1). The requestor has a right of access to his own driver's license number pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself). The city must withhold the driver's license numbers of the other customers, which we have marked, under section 552.130.

Section 552.136 of the Government Code provides, in part, the following:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device 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.

(b) Notwithstanding 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(a)-(b). The requestor has a right of access to his own account number pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. We conclude the city must withhold the account numbers of the other customers, which we have marked, under section 552.136.

In summary, to the extent the customers made written requests for confidentiality prior to the city's receipt of this request for information, the city 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. The city must withhold the driver's license numbers we have marked under section 552.130 of the Government Code and the account numbers we have marked under section 552.136 of the Government Code. The city must release the remaining information to the requestor.<sup>3</sup>

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, at (877) 673-6839. Questions concerning the allowable charges for providing public

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<sup>3</sup>We note some of the information being released in this instance includes information that is confidential with respect to the general public. Therefore, if the city receives another request for this information from an individual other than this requestor, the city must again seek a ruling from this office.

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 cursive script that reads "Lindsay E. Hale". The signature is written in black ink and is positioned above the typed name.

Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/tch

Ref: ID# 472212

Enc. Submitted documents

c: Requestor  
(w/o enclosures)