



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 19, 2014

Mr. Bill Webb  
President  
Etoile Water Supply Corporation  
P.O. Box 67  
Etoile, Texas 75944

OR2014-04658

Dear Mr. Webb:

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# 517591 (Complaint ID# 513939).

The Etoile Water Supply Corporation (the "corporation") received a request for information. You state you have released some information to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the corporation's obligations under the Act. Section 552.301 of the Government Code prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. Pursuant to section 552.301(b) of the Government Code, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See id.* § 552.301(b). Further, pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples,

labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e)(1)(D). As of the date of this ruling, the corporation has not submitted to this office a copy of the request, nor have you indicated the date when the request was received by the corporation. Accordingly, we conclude the corporation failed to comply with the requirements of section 552.301.

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 the requested information is public and must be released unless a compelling reason exists 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). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because section 552.101 and section 552.136 of the Government Code can provide compelling reasons to withhold information, we will consider the applicability of these exceptions 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. Section 182.052 of the Utilities Code provides in relevant part the following:

- (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.

Until Code § 182.052(a)-(b). Section 182.054 of the Utilities Code provides six exceptions to the disclosure prohibition found in section 182.052. *See id.* § 182.054. "Personal information" under section 182.052(a) means an individual's address, but does not include the individual's name. *See id.* § 182.051(4); *see also* Open Records Decision No. 625 (1994)

(construing statutory predecessor). We note 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). Water service is included in the scope of utility services covered by section 182.052. See Util. Code § 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.

We note the submitted information includes billing information. Because we are unable to determine whether the corporation's primary source of water is a sole-source designated aquifer, we must rule in the alternative for the customers' billing information. Accordingly, if the primary source of water for the corporation is not a sole source designated aquifer, then the corporation must withhold, under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code, the billing information of each customer who timely made a written request for confidentiality for such information. Conversely, if the primary source of water is a sole-source aquifer and the customers at issue timely elected confidentiality for their billing information, then the corporation has the discretion to release billing information, notwithstanding the customers' requests for confidentiality. However, in either case, if a customer did not timely elect confidentiality for billing information, then the corporation may not withhold that customer's billing information under section 552.101 in conjunction with section 182.052. See ORD 625 at 7 (character of requested information as public or not public must be determined at time request for information is made). Further, in either case, the corporation may not withhold the billing information of business, governmental, and other artificial entities, which we marked for release, under section 552.101 on that basis.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has found financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy, but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. See Open Records Decision Nos. 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), 523 (1989) (information related to an individual's mortgage payments, assets, bills, and credit history is excepted from disclosure under the common law right to privacy). Upon

review, we find the information we have marked meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, the corporation must withhold the information we have marked under section 552.101 of the Government Code. However, we find that none of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Therefore, the corporation may not withhold the remaining information on the basis of section 552.101 in conjunction with common-law privacy.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code.<sup>1</sup> Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the corporation may only withhold information under section 552.117 on behalf of current or former officials or employees who made requests for confidentiality under section 552.024 prior to the date on which the request for this information was made. To the extent the employee at issue timely elected to keep such information confidential under section 552.024, the corporation must withhold the information we have marked under section 552.117(a)(1) of the Government Code. If the employee did not make a timely election under section 552.024, the corporation may not withhold the information we have marked under section 552.117(a)(1) of the Government Code.

Section 552.136 of the Government Code provides “[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. *See id.* § 552.136(a) (defining “access device”). The corporation must withhold the utility service account numbers we have marked under section 552.136 of the Government Code.<sup>2</sup>

In summary, if the primary source of water for the corporation is not a sole source designated aquifer, then the corporation must withhold, under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code, the billing information of

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<sup>1</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).

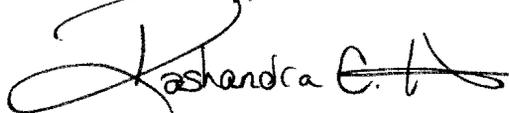
<sup>2</sup>Section 552.136 of the Government Code permits a governmental body to withhold the information described in section 552.136(b) without the necessity of seeking a decision from this office. *See* Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

individual customers who timely made written requests for confidentiality for such information. Conversely, if the primary source of water is a sole-source aquifer and the individual customers at issue timely elected confidentiality for their water usage information, then the corporation has the discretion to release water usage information, notwithstanding the individual customers' requests for confidentiality. The corporation must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The corporation must withhold the information we have marked under section 552.117(a)(1) of the Government Code if the individual whose information is at issue timely elected confidentiality pursuant to section 552.024 of the Government Code. The corporation must withhold the utility service account numbers we have marked under section 552.136 of the Government 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Rashandra C. Hayes  
Assistant Attorney General  
Open Records Division

RCH/dls

Ref: ID# 517591

Enc. Submitted documents

c: Requestor  
(w/o enclosures)