



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 12, 2014

Ms. Amy L. Sims  
Assistant City Attorney  
Office of the City Attorney  
City of Lubbock  
P.O. Box 2000  
Lubbock, Texas 79457

OR2014-08007

Dear Ms. Sims:

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# 523268.

The City of Lubbock (the "city") received a request for the amount of water usage by name and address in the city for the top thirty-three percent of residential and commercial water consumers for July 2013.<sup>1</sup> You claim 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.

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 the submitted information is excepted from disclosure under section 552.101 because the public release of the information is inconsistent with the

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<sup>1</sup>The submitted information reflects the city 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 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 request is clarified or narrowed).

mandate in part 681 of title 16 of the Code of Federal Regulations (the “Red Flags Rules”). *See* 16 C.F.R. pt. 681; *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 1681m(e)(4) of title 15 of the United States Code and includes a utility company. *Id.* § 681.1(b)(5); *see also* 15 U.S.C. §§ 1681m(e)(4) (defining “creditor”), 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, and submit supporting documentation which demonstrates, the city passed a resolution adopting and implementing 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 the submitted information confidential. Therefore, you have not demonstrated how the Red Flags Rules make the information at issue 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 city 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 city may not withhold the submitted information under section 552.101 of the Government Code in conjunction with either the Red Flags Rules or the city's identity theft prevention program.

Section 552.101 of the Government Code encompasses information protected by other statutes, such as section 521.051 of the Business and Commerce Code. Section 521.051(a) of the Business and Commerce Code provides:

A person may not obtain, possess, transfer, or use personal identifying information of another person without the other person's consent and with intent to obtain a good, a service, insurance, an extension of credit, or any other thing of value in the other person's name.

Bus. & Com. Code § 521.051(a) (formerly Bus. & Com. Code § 48.101(a)). "Personal identifying information" means "information that alone or in conjunction with other information identifies an individual" and includes an individual's name. *Id.* § 521.002(a)(1)(A). You assert the names of individuals at issue meet the definition of "personal identifying information" under section 521.002(a)(1) of the Business and Commerce Code. *See id.* § 521.002(a)(1). We note section 521.051(a) does not prohibit the transfer of personal identifying information of another person unless the transfer is made with the intent to obtain a good, a service, insurance, an extension of credit, or any other thing of value in the other person's name without that person's consent. *See id.* § 521.051(a). In this instance, the city's release of the information at issue would be for the purpose of complying with the Act, and not "with intent to obtain a good, a service, insurance, an extension of credit, or any other thing of value[.]" *See id.* Therefore, section 521.051(a) does not prohibit the city from transferring the requested information. Accordingly, the city may not withhold the information at issue under section 552.101 in conjunction with section 521.051.

Section 552.101 of the Government Code also encompasses section 182.052 of the Utilities Code, which 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.

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) includes 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 a post office box number is not an address for the purposes of section 182.052. A customer’s request for confidentiality must precede the utility’s receipt of the request for information. ORD 625 at 6. Additionally, because section 182.052 is intended to protect the safety and privacy of individual customers, this statute is applicable to only information pertaining to natural persons, and does not protect information relating to business, governmental, and other artificial entities. *See id.* at 4-5 (in context of section 182.051(4) of the Utilities Code, “individual” means only natural persons and does not include artificial entities).

You contend some of the submitted information is subject to section 182.052. We note some of the information at issue pertains to businesses or other artificial entities, and not natural persons. As such, the information pertaining to businesses or other artificial entities is not information made confidential by section 182.052, and the city may not withhold such information under section 552.101 of the Government Code on this basis. As to the information pertaining to natural persons, you state the individuals you have indicated made written requests for confidentiality under section 182.052. We are unable to determine whether the primary source of water for the city’s utility is a sole-source designated aquifer. As such, we rule conditionally. The city must withhold the addresses and utility usage information of the customers you have indicated who made written requests for confidentiality under section 552.101 in conjunction with section 182.052 if the primary source of water is not a sole-source designated aquifer. *See* ORD 625 at 7 (character of requested information as public or not public must be determined at time request for information is made). To the extent the primary source of water is a sole-source designated aquifer, then the city has the discretion to release the utility usage information, notwithstanding the customers’ requests for confidentiality.

You contend some of the remaining information is protected under common-law privacy. Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found.*, 540 S.W.2d at 685. To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. We note this office has found that names, telephone numbers, and addresses are generally not excepted from public

disclosure under common-law privacy. *See* Open Records Decision No. 455 at 7 (1987). Upon our review, we find you have failed to demonstrate the remaining information is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city may not withhold the remaining information under section 552.101 in conjunction with common-law privacy.

In summary, the city must withhold the addresses and utility usage information of the customers you have indicated who made written requests for confidentiality under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code if the primary source of water is not a sole-source designated aquifer. To the extent the primary source of water is a sole-source designated aquifer, then the city has the discretion to release the utility usage information, notwithstanding the customers' requests for confidentiality. The city must release the remaining information.

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,



Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/akg

Ref: ID# 523268

Enc. Submitted documents

c: Requestor  
(w/o enclosures)