



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 23, 2014

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

OR2014-08904

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# 523690.

The City of Lubbock (the "city") received a request for a list of the top ten water users, including the amount of water used and rate paid, for a specified time period. 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 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 city has passed a resolution regarding the implementation of the Red Flags Rules. We understand the city has 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 submitted information. Therefore, you have not demonstrated how the Red Flags Rules make the submitted information 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 also 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.

Util. Code § 182.052(a)-(b). "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.

You state some of the submitted information relates to customers who have requested their accounts be kept confidential. In this instance, however, the customers listed in the submitted information are business, governmental, and other artificial entities, not natural persons. Therefore, none of the submitted information is confidential under section 182.052 and, the city may not withhold any portion of the submitted information under section 552.101 in conjunction with section 182.052 of the Utility Code.

You also argue the names of the water users in the submitted information are excepted from disclosure under section 552.101 in conjunction with 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. & Comm. 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 the water users 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) of the Business and Commerce Code 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). 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) of the Business and Commerce Code does not prohibit the city from transferring the requested information. Accordingly, the city may not withhold the names of the water users under section 552.101 of the Government Code in conjunction with section 521.051 of the Business and Commerce Code.

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. *Industrial Foundation*, 540 S.W.2d at 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 common-law privacy protects the interests of individuals, not those of corporate and other business entities. *See* Open Records Decision Nos. 620 (1993) (corporation has no right to privacy), 192 (1978) (right to privacy is designed primarily to protect human feelings and sensibilities, rather than property, business, or other pecuniary interests); *see also Rosen v. Matthews Constr. Co.*, 777 S.W.2d 434 (Tex. App.—Houston [14th Dist.] 1989) (corporation has no right to privacy (citing *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950))), *rev’d on other grounds*, 796 S.W.2d 692 (Tex. 1990). Upon review, we find no portion of the remaining information is highly intimate or embarrassing and of no legitimate public concern, and the city may not withhold any of the submitted information under section 552.101 of the Government Code on the basis of common-law privacy. As you raise no further exceptions to disclosure, the submitted 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, 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,

A handwritten signature in black ink, appearing to read 'Meredith L. Coffman', with a long horizontal flourish extending to the right.

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/dls

Ref: ID# 523690

Enc. Submitted documents

c: Requestor
(w/o enclosures)