



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 13, 2014

Mr. O. Charles Buenger  
Counsel for the Chalk Bluff Water Supply Corporation  
Buenger and Associates  
3203 Robinson Drive  
Waco, Texas 76706

OR2014-14171

Dear Mr. Buenger:

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# 532724.

The Chalk Bluff Water Supply Corporation (the "corporation"), which you represent, received a request for information from the seventeen months preceding the request regarding (1) requests for payments made to the corporation, (2) payments made in response to the requests referenced in category one, (3) all money received by the corporation, (4) the quantity of water corporation wells have produced, and (5) the gallons of water the corporation received payment for each month. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup> We have also received and considered comments from the requestor. *See Gov't Code § 552.304* (interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's assertion that the corporation did not comply with the procedural obligations of section 552.301 of the Government Code. Pursuant to section 552.301(b) of the Government Code, a governmental body must request a ruling from

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<sup>1</sup>We 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 those records contain substantially different types of information than that submitted to this office.

this office and state the exceptions that apply within ten-business-days after receiving the request for information. *See id.* § 552.301(b). The requestor states he submitted his request for information on May 23, 2014, and therefore, the corporation was late in requesting a ruling from this office on June 6, 2014. You inform us the corporation was closed on May 26, 2014 for Memorial Day. This office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. Accordingly, we note the corporation's ten-business-day deadline to request a ruling from this office in response to this request was June 9, 2014. The envelope in which the corporation sent its request for a ruling to this office was postmarked June 6, 2014. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Therefore, we find the corporation complied with section 552.301(b) of the Government Code in requesting a ruling from this office.

Next, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part, the following:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

*Id.* § 552.022(a)(3). Some of the submitted information consists of information in an account, voucher, or contract relating to the receipt or expenditure of funds by a governmental body that is subject to section 552.022(a)(3). The corporation must release this information pursuant to section 552.022(a)(3), unless it is made confidential under the Act or other law. *See id.* Although the corporation raises section 552.103 of the Government Code for this information, section 552.103 is discretionary in nature and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the corporation may not withhold any of the information subject to section 552.022, which we have marked, under section 552.103. However, sections 552.101, 552.117, and 552.136 of the Government Code make information confidential for purposes of section 552.022. Accordingly, we will consider the applicability

of these exceptions to the information subject to section 552.022.<sup>2</sup> Further, we will address the corporation's argument under section 552.103 for the remaining information.

Next, we will address your argument against the disclosure of the information not subject to section 552.022. Section 552.103 of the Government Code provides in part:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body that claims an exception to disclosure under section 552.103 has the burden of providing relevant facts and documentation sufficient to establish the applicability of this exception to the information at issue. To meet this burden, the governmental body must demonstrate that (1) litigation was pending or reasonably anticipated on the date of its receipt of the request for information and (2) the information at issue is related to the pending or anticipated litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *See Open Records Decision No. 551 at 4 (1990).*

You state, and have provided a pleading demonstrating, that a lawsuit styled *Blankenship v. Buenger*, Cause No. 2014-400-5, was filed in a district court of McLennan County prior to the receipt of this request for information. The submitted pleading reflects the corporation is a party to this litigation. Based on our review of the pleading you provided and the information at issue, we find the information at issue is related to this pending litigation. Therefore, the corporation may withhold the information not subject to section 552.022 under section 552.103 of the Government Code.

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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).*

However, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to all parties to the pending litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).

Next, we turn to the information subject to section 552.022(a)(3) of the Government Code. 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 made confidential 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) includes an individual's address, telephone number, and 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). Section 182.054 of the Utilities Code provides six exceptions to the disclosure prohibition found in section 182.052. Util. Code § 182.054. We understand none of the exceptions listed in section 182.054 are applicable to the information at issue.

We note some of the information subject to section 552.022(a)(3) is subject to section 182.052 of the Utilities Code. However, we note you have not provided a confidentiality election form for the individuals whose information is at issue. Thus, we are unable to determine if these individuals timely requested confidentiality. Further, we are unable to determine whether the corporation's primary source of water is a sole-source designated aquifer. Accordingly, we must rule conditionally. If the primary source of water for the corporation is not a sole-source designated aquifer, then the corporation must withhold the water billing information we have marked if the individuals timely made a

written request for confidentiality for that information under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code. Conversely, if the primary source of water for the corporation is a sole-source aquifer and the individuals timely elected confidentiality for their water usage information, then the corporation has the discretion to release water usage information, notwithstanding the individual's request for confidentiality. However, if the individuals did not timely elect confidentiality for their water billing information, then the corporation may not withhold that 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).

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. 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 a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. To the extent the employees 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 employees 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(b) of the Government Code states "[n]otwithstanding any other provision of [the Act], 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); *see id.* § 552.136(a) (defining "access device"). Therefore, the corporation must withhold the account numbers and routing number we have indicated under section 552.136 of the Government Code.

We note some of the information at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

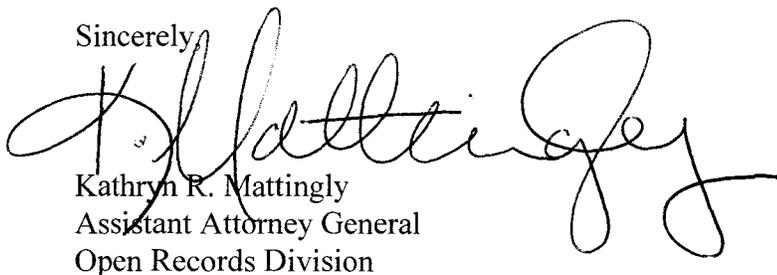
In summary, the corporation may withhold the information not subject to section 552.022 under section 552.103 of the Government Code. If the primary source of water for the

corporation is not a sole-source designated aquifer, then the corporation must withhold the water billing information we have marked if the individuals timely made a written request for confidentiality for that information under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code. If the primary source of water for the corporation is a sole-source aquifer and the individuals timely elected confidentiality for their water usage information, then the corporation has the discretion to release water usage information, notwithstanding the individual's request for confidentiality. The corporation must withhold the information we have marked under section 552.117(a)(1) of the Government Code, to the extent the employees at issue timely elected to keep such information confidential under section 552.024. The corporation must withhold the account numbers and routing number we have indicated under section 552.136 of the Government Code. The remaining information must be released; however any information subject to copyright may only be released in accordance with copyright law.

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,

A handwritten signature in black ink, appearing to read 'K. Mattingly', written over a typed name and title.

Kathryn R. Mattingly  
Assistant Attorney General  
Open Records Division

KRM/bhf

Ref: ID# 532724

Enc. Submitted documents

c: Requestor  
(w/o enclosures)