



January 5, 2015

Ms. Diane L. Lincoln
Mayor
Town of Woodloch
P.O. Box 1379
Conroe, Texas 77305-1379

OR2015-00031

Dear Ms. Lincoln:

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# 548651.

The Town of Woodloch (the "town") received a request for the billing history for a specified address. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor has excluded the following information from his request: dates of birth, social security numbers, check routing numbers, ages of children, and banking history information. Accordingly, these types of information, which we have marked, are not responsive to the request for information. This ruling does not address the public availability of non-responsive information, and the town need not release non-responsive information to the requestor.

¹Although you also raise sections 552.022 and 552.229 of the Government Code, we note these sections are not exceptions to disclosure under the Act. *See* Gov't Code §§ 552.022, .229. Further, although you do not raise section 552.101 of the Government Code in your briefing, we understand you to raise this exception based on your arguments.

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

Without limiting the amount or kind of information that is public information under this chapter, the 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[.]

Gov't Code § 552.022(a)(3). The responsive information consists of a water and sewage account's billing history and reflects payments made to the town. Accordingly, we find the responsive information is subject to section 552.022(a)(3). You assert this information is excepted from release under section 552.103 of the Government Code. However, that section is discretionary 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); Open Records Decision No. 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the town may not withhold the responsive information under section 552.103. Because section 552.101 of the Government Code can make information confidential under the Act, we will consider your arguments under that section for the responsive 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 other statutes make confidential. The town raises the Privacy Act of 1974, section 552a of title 5 of the United States Code ("Federal Privacy Act") for the responsive information. However, the Federal Privacy Act applies only to a federal agency. *See* 5 U.S.C. §§ 552(f), 552a(a). State and local government agencies are not covered by the Federal Privacy Act. *See Davidson v. Georgia*, 622 F. 2d 895, 896 (5th Cir. 1980); *see also* Attorney General Opinion MW-95 (1979). Because the town is not a federal agency, it is not bound by the Federal Privacy Act's confidentiality provisions, as would be a federal agency. *See* 5 U.S.C. §§ 552a(a)(1), 552(f) (defining "agency" for purposes of Federal Privacy Act). Therefore, the town may not withhold any of the responsive information under section 552.101 of the Government Code in conjunction with the Federal Privacy Act.

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). "Personal information" under section 182.052(a) means an individual's address, telephone number, or social security number. *See id.* § 182.051(4); *see also* Open Records Decision No. 625 (1994) (construing statutory predecessor). The scope of utility services covered by section 182.052 includes water and sewage. 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 raise section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code. You inform us the responsive information pertains to a utility customer who has elected to keep his consumption, billing, and personal information protected. However, we note the customer's election form, which you have provided to our office, reflects this customer did not request confidentiality under section 182.052 prior to the date the town received the request for information. Accordingly, we find section 182.052 is not applicable to the responsive information, and the town may not withhold it under section 552.101 of the Government Code on that basis.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license issued by an agency of this state or another state or country is excepted from public release.² *See* Gov't Code § 552.130(a)(1). The town must withhold the customer's driver's license number under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides, "[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." *Id.* § 552.136(b);

²The 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).

see id. § 552.136(a) (defining “access device”). Upon review, we find the town must withhold the customer’s utility account number under section 552.136 of the Government Code.

In summary, the town must withhold the customer’s driver’s license number under section 552.130 of the Government Code and the customer’s utility account number under section 552.136 of the Government Code. The town must release the remaining responsive 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, 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,



Kristi L. Godden
Assistant Attorney General
Open Records Division

KLK/cz

Ref: ID# 548651

Enc. Submitted documents

c: Requestor
(w/o enclosures)