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ATTORNEY GENERAL OF TEXAS

July 1, 2015

Ms. Mary Ann Powell
Counsel for the City of Hempstead
Olson & Olson, L.L.P.
2727 Allen Parkway, Suite 600
Houston, Texas 77019-2133

OR2015-13256

Dear Ms. Powell:

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# 569819 (Hempstead Reference No. COH15-007).

The City of Hempstead (the "city"), which you represent, received a request for information pertaining to excluded cutoffs, removal of penalties, or other charges authorized by the mayor or the city for a specified time period. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

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:

¹We assume that 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 that those records contain substantially different types of information than that submitted to this office.

(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). 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 Utilities Code, "individual" means only natural persons and does not include artificial entities). The scope of utility services covered by section 182.052 includes water, wastewater, sewer, gas, garbage, electricity, or drainage service. 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 for portions of the submitted information. You do not indicate, and it does not otherwise appear, any of the exceptions to confidentiality under section 182.054 apply in this instance. However, we note some of the customers listed in the submitted information are businesses. Therefore, none of the submitted information pertaining to these businesses is confidential under section 182.052, and the city may not withhold any of this information under section 552.101. Although you also seek to withhold account numbers of the remaining customers at issue, we note this information is not included in the definition of personal information and, therefore, is not confidential under section 182.052 of the Utilities Code. *See id.* § 182.051(4); *see also* ORD 625. Thus, the city may not withhold the account numbers of the remaining customers at issue under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code. We note you have not provided a confidentiality election form for the remaining individuals whose information is at issue. Thus, we are unable to determine if these individuals timely requested confidentiality. Further, you do not inform us whether the city's primary source of water is a sole-source designated aquifer. Accordingly, we must rule conditionally. If the city's primary source of water is not a sole-source designated aquifer, then the city must withhold the personal, usage,

and billing information pertaining to natural persons, a representative sample of which we have marked, under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code, provided the individuals timely made a written request for confidentiality for that information. Conversely, if the city's primary source of water is a sole-source aquifer and the individuals timely elected confidentiality for their water usage information, then the city has the discretion to release that information, notwithstanding the individuals' requests for confidentiality. However, if the individuals did not timely elect confidentiality for their personal, usage, and billing information, then the city 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). In any event, we find no portion of the remaining information consists of personal, usage, or billing information subject to section 182.052 of the Utilities Code; therefore, no portion of the remaining information may be withheld under section 552.101 of the Government Code on that basis.

The remaining information contains account numbers subject to section 552.136 of the Government Code.² 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." Gov't Code § 552.136(b). Section 552.136(a) defines "access device" as "a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument." *Id.* § 552.136(a). Accordingly, the city must withhold the account numbers we have marked under section 552.136 of the Government Code.

In summary, if the city's primary source of water is not a sole-source designated aquifer, then the city must withhold the personal, usage, and billing information pertaining to natural persons, a representative sample of which we have marked, under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code, provided the individuals timely made a written request for confidentiality for that information. If the city's primary source of water is a sole-source aquifer and the individuals timely elected confidentiality for their water usage information, then the city has the discretion to release that information, notwithstanding the individuals' requests for confidentiality. The city must withhold the account numbers we have marked under section 552.136 of the Government Code. The city must release the remaining information.

²The 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).

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,



Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/cbz

Ref: ID# 569819

Enc. Submitted documents

c: Requestor
(w/o enclosures)