



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 7, 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

OR2015-13684

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# 570637 (Hempstead Ref. No. COH15-007).

The City of Hempstead (the "city"), which you represent, received a request for (1) any memoranda pertaining to a specified utility account; (2) the city's utility history of debts and credits over a specified time period; (3) documents detailing any excluded cutoff authorized by the city for any utility client over a specified time period; and (4) documents detailing any removal of penalties or other charges authorized by the city's mayor or a named individual of any utility bill over a specified time period.¹ You state the city has released some information to the requestor. 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 representative sample of information.²

¹You state the city sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²We 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.

Section 552.101 of the Government Code exempts 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:

(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 Utility 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 the submitted information. You state none 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. 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 within the submitted information 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). 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, 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,



Abigail T. Adams
Assistant Attorney General
Open Records Division

ATA/akg

Ref: ID# 570637

Enc. Submitted documents

c: Requestor
(w/o enclosures)