



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 22, 2016

Mr. Christopher Gregg  
Counsel for the City of Nassau Bay  
Gregg & Gregg, P.C.  
16055 Space Center Boulevard, Suite 150  
Houston, Texas 77062

OR2016-09103

Dear Mr. Gregg:

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# 606947.

The City of Nassau Bay (the "city"), which you represent, received a request for a list of city residents, including names, addresses, telephone numbers, and e-mail addresses. You claim some of the submitted information is exempted from disclosure under sections 552.101, 552.117, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information is not responsive to the present request because it does not pertain to any of the information requested by the requestor. This ruling does not address the public availability of the non-responsive information, which we have marked, and the city need not release it in response to this request.

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, but does not include an 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 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. Upon review, we find the submitted information contains the personal information of customers who have elected confidentiality for their billing information prior to the date the city received the present request for 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. Therefore, we find the city must withhold the personal information for the customers who have elected confidentiality under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code.

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 on this basis. Additionally, we note the submitted information contains the personal information of customers who did not elect confidentiality for their billing information prior to the date the city received the present request for information. Thus, 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.

Section 552.101 of the Government Code also encompasses common-law privacy. Common-law privacy protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally private. *See* Open Records Decision Nos. 600 (1992) (employee's designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 455 at 7 (1987) (home addresses, telephone numbers, and dates of birth not private), 423 at 2 (1984) (scope of public employee privacy is narrow), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). 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 remaining information under section 552.101 of the Government Code on the basis of common-law privacy.

Section 552.117 of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of specified categories of individuals. *See* Gov't Code § 552.117. We note section 552.117 applies only to records that a governmental body holds in an employment capacity. The information at issue is not held by the city as an employer. Therefore, we find section 552.117(a) of the Government Code does not apply in this situation, and the city may not withhold any portion of the remaining information on that basis.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). Accordingly, the city must withhold the personal e-mail addresses under section 552.137, unless the individuals to whom the e-mail addresses belong affirmatively consent to their release. *See id.* § 552.137(b).

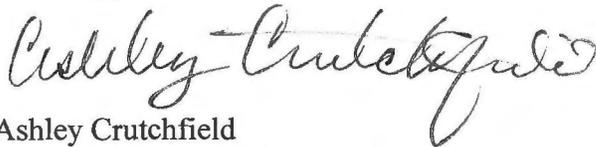
In summary, the city must withhold the personal information for the customers who are natural persons and have elected confidentiality under section 552.101 of the Government

Code in conjunction with section 182.052 of the Utilities Code. The city must also withhold the personal e-mail addresses under section 552.137, unless the individuals to whom the e-mail addresses belong affirmatively consent to their release. 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](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,



Ashley Crutchfield  
Assistant Attorney General  
Open Records Division

AC/dls

Ref: ID# 606947

Enc. Submitted documents

c: Requestor  
(w/o enclosures)