



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 25, 1994

Ms. Tracy R. Briggs
Assistant City Attorney
City of Houston
Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR94-489

Dear Ms. Briggs:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 25467.

The City of Houston (the "city") has received a request for information regarding names and other information about customers who opened city water service accounts from August 1, 1993, to February 15, 1994, in certain zip code areas. Your letter suggests that at least some of this information is excepted from public disclosure under section 552.101 of the act in conjunction with recently-enacted article 1446h, V.T.C.S. (effective September 1, 1993).

Section 2 of article 1446h prohibits a government-operated utility from disclosing the address, telephone number, or social security number ("personal information") in a customer's account records "if the customer requests that the government-operated utility keep the information confidential." V.T.C.S. art. 1446h, § 2. It further provides:

The customer may request confidentiality by delivering to the government-operated utility an appropriately marked form provided under Section 4(3) of this Act or any other *written* request for confidentiality. The customer may rescind a request for confidentiality by providing the government-operated utility written permission to disclose personal information.

Id. (emphasis added). Section 4 provides as follows:

A government-operated utility shall include with a bill sent to each of its customers:

- (1) a notice of the customer's right to request confidentiality of personal information under this Act;
- (2) a statement of the amount of any fee applicable to the request; and
- (3) a form that the customer may use to request that confidentiality by marking an appropriate box on the form and returning it to the government-operated utility.

First, you ask whether information is confidential under article 1446h if it is requested after the article's effective date but *before* the city provides its customers with the notice required by section 4. In Open Records Decision No. 625 (1994), this office addressed exactly this question and concluded,

[A] government-operated utility must, in response to a request for the information, release personal information about its customers even before it has notified them of their rights under section 4 . . . and given them time to request confidentiality. Even after September 1, 1993, a government-operated utility must release personal information about a customer unless the customer asks that the information be kept confidential. . . . [T]he confidentiality of the information is in no way tied to the [section 4] notice.

Open Records Decision No. 625 at 4-5 (footnote omitted) (copy enclosed). Thus, as of the effective date of article 1446h, the city must release personal information about all customers for whom it has not received a written request for confidentiality, regardless of whether the city has provided the section 4 notice.

You also ask if personal information must be released "if in the interim between requesting this opinion and receiving the Attorney General's response, we complete the required survey, and some customers respond by electing to keep their personal information confidential." Open Records Decision No. 625 makes clear that personal information must be released by the city "unless, before the city receives a request for the information, the customer asks that the information be kept confidential. The character of the requested information as public or not public must be determined at the time the request for information is made." *Id.* at 6 (citing Open Records Decision No. 530 (1989) at 5). Thus, in response to the request for information at issue, the city must release personal information for all customers from whom it had not received a written request for confidentiality as of February 22, 1994, the date the city received the information request.¹

¹You appear concerned about the effect of the release of personal information prior to a customer's submission of a written request for confidentiality. We do not believe that the fact that the city released personal information about a customer in the past has any effect on the confidentiality of such information after a request for confidentiality has been received. As of the date a government-operated

Finally, we note that you state that new customers "will be orally notified of their right to request confidentiality. Their election will be entered directly into the computer. No forms are filled out in writing at the time a new account is opened." Article 1446h refers specifically to *written* requests for confidentiality. *See supra* V.T.C.S. art. 1446, § 2. Article 1446h does not permit a government-operated utility to refuse to release information where the customer has not requested confidentiality in writing. Therefore, where the customer has made only an oral request for confidentiality, the information is not confidential under article 1446h and therefore may not be excepted from required public disclosure under section 552.101 of the act.

In sum, if, as of the date of the information request, the city had received no written requests for confidentiality, as appears to have been the case, none of the information sought is excepted from required public disclosure under section 552.101 of the act in conjunction with article 1446h, and all of the requested information must be released. If you have questions about this ruling, please contact our office.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Open Government Section

MRC/MAR/rho

Ref.: ID# 25467

Enclosures: Open Records Decision No. 625

cc: Ms. Lisa G. Marcelli
Investment Consultant
Banc One Securities Corporation
7807 Long Point
Houston, Texas 77055
(w/o enclosures)

(Footnote continued)

utility receives a written request for confidentiality from a customer, it must keep that information confidential, regardless of whether the information may have been released in the past.