



February 15, 2000

Mr. Walter W. Leonard
Attorney at Law
One Summit Avenue, Suite 1010
Fort Worth, Texas 76102

OR2000-0523

Dear Mr. Leonard:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 132424.

The Benbrook Water and Sewer Authority (the "authority") received a request for a list of Benbrook utility customers who have requested that their names not be released by the authority to the public.¹ You have submitted a representative sample of the responsive information.² You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law,

¹You indicate that the requestor has also asked for a "manning table" and a policy statement regarding current staffing practices. You assert that this information does not exist. The Public Information Act does not require a governmental body to make available information which does not exist. Open Record Decision No. 362 (1983), nor does it require a governmental body to answer factual questions. Open Records Decision Nos. 347 (1982), 379 (1983), 555 (1990).

²In reaching our conclusion here, we 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.

either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. Section 182.052 of the Utility Code provides that a government-operated utility may not disclose personal information from its customer’s account if the customer requests that the information be kept confidential. Personal information is defined as an individual’s address, phone number, or social security number. Util. Code § 182.051. You explain that certain customers have elected to have their personal information withheld under section 182.052(b). Based on your statements that the customers have taken the appropriate steps to restrict access to their personal information, we conclude that the customers’ addresses must be withheld under this statute if the election was made prior to the date the request was received. However, because the definition of “personal information” does not include the customer’s name, the city may not withhold the utility customers’ names under section 182.052 of the Utilities Code in conjunction with section 552.101 of the Government Code. Thus, you must release the names of the utility customers to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Carla Gay Dickson
Assistant Attorney General
Open Records Division

CGD/ch

Ref: ID# 132424

Encl. Submitted documents

cc: Mr. Rick Whitehurst
Financial & Insurance Associates
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(w/o enclosures)