



October 16, 2001

Mr. G. Chadwick Weaver
First Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 78702-1152

OR2001-4672

Dear Mr. Weaver:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 153460.

The City of Midland (the "city") received a request for the "name and number of the current utility customer" at a specified address.¹ You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code, in conjunction with section 182.052 of the Utilities Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that Subsections 552.301(a) and (b) provide:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

¹We assume that in this instance, by requesting the "number" of the utility customer at the given address, the requestor is seeking the customer's telephone number.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

You inform us that the city received the request for information on March 28, 2001. Your request for a decision from this office was postmarked August 10, 2001. Consequently, we conclude that you failed to request a decision within the ten business-day period mandated by section 552.301(a) of the Government Code. Because the request for a decision was not timely, the requested information is presumed to be public information. Gov't Code § 552.302.

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); *see* Open Records Decision No. 630 (1994). A compelling interest exists where a third party's interests are implicated or another source of law makes the information confidential. You raise section 552.101 of the Government Code, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Therefore, we will address your argument under section 182.052 of the Utilities Code.

Section 182.052 provides, in part:

(a) Except as provided by Section 182.054, a government-operated utility may not disclose personal information in a customer's account record if the customer requests that the government-operated utility keep the information confidential.

Section 182.051 defines "personal information" as meaning an individual's address, telephone number, or social security number. Util. Code §182.051(4).

You inform us that the current customer at the specified address requested that his personal information be kept confidential. Whether the customer's personal information is protected from disclosure by section 182.052 must be determined at the time the request is made. *See* Open Records Decision No. 625 at 5-6 (1994). If the customer's request for confidentiality preceded a request for the customer's personal information, then such information is protected; otherwise, that information would have to be released even before the customer is informed of any request, or is given an opportunity to request confidentiality. *See id.* If the customer at issue requested confidentiality prior to the date of this request, then we agree that his telephone number must be withheld under section 182.052. The customer's name is not protected under section 182.052 and must be released because it is not personal information as defined under section 182.051(4).

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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,

A handwritten signature in black ink that reads "Michael A. Pearle". The signature is written in a cursive style with a large initial "M".

Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 153460

Enc. Submitted documents

c: Ms. Mary Garcia
608 West 12th Street
Austin, Texas 78701
(w/o enclosures)