OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

December 16, 2002

Mr. Robert E. Hager
Nichols, Jackson, Dillard,
Hager & Smith L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR2002-7178

Dear Mr. Hager:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 173768.

The City of Rowlett (the "city"), which you represent, received a written request for the current "address, phone number, place of employment, business telephone, cell number, [and] forwarding address" of two named individuals. You contend that the requested information is made confidential under section 182.052 of the Utilities Code and, thus, must be withheld pursuant to section 552.101 of the Government Code.

Under section 552.101 of the Government Code, the city is required to withhold "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 182.052 of the Utilities Code 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 city "cannot locate any type of notice from the City to the customer advising of his right to confidentiality." Whether the customers' personal information is protected from disclosure by section 182.052 must be determined at the time the records request is made. *See* Open Records Decision No. 625 at 5-6 (1994). Consequently, if the

city determines that the utility customers requested confidentiality of their personal information prior to the city's receipt of the current records request, then such information is made confidential under section 182.052 and, thus, must be withheld pursuant to section 552.101 of the Government Code.[1] Otherwise, the requested information must be released, even if the city has not yet advised the utility customers of their right to request confidentiality. *See id.*

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).

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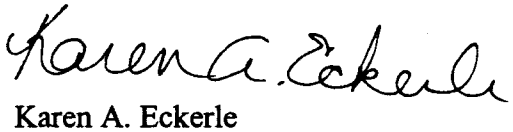
[1]Please note, however, that section 182.052 does not apply to a utility customer that is a corporation, partnership, or other business association. *See* Open Records Decision No. 625 (1994) (corporations, partnerships, and other business associations do not qualify as "individuals").

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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/RWP/lmt

Enc. Submitted documents

Ref: ID# 173768

c: Ms. Sandy Marshall
3854 Hadensville Road
Allensville, Kentucky 42204
(w/o enclosures)