



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

March 12, 2003

Mr. Bill Ainsworth
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2003-1643

Dear Mr. Ainsworth:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 177776.

The City of Corpus Christi (the "city") received a request for water records for a specified address during a particular time interval, to include itemized billing statements reflecting water consumption and the dates the water meter was read. 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 information you submitted.

We first note that the city has not complied with section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) provides that "[t]he governmental body must ask for the attorney general's decision and state the exceptions that apply . . . not later than the tenth business day after the date of receiving the written request [for information]." Gov't Code § 552.301(b). Section 552.302 provides that "[i]f a governmental body does not request an attorney general decision as provided by Section 552.301 . . . the information requested in writing is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information."

You state that the city received this request for information on December 6, 2002. The city requested this decision by letter dated December 30, 2002. Thus, as the city did not request

this decision within the ten-business-day period prescribed by section 552.301(b), it has not complied with section 552.301. Therefore, the requested information is presumed to be public and must be released under section 552.302, unless there is a compelling reason to withhold any of the information from the public. *See also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). The presumption that information is public under section 552.302 can generally be overcome by a demonstration that the information is confidential by law or that third-party interests are at stake. *See Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982)*. As a claim under section 552.101 of the Government Code, which the city raises, can provide a compelling reason for non-disclosure under section 552.302, we will address your arguments.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This exception encompasses information that another statute makes confidential. You claim that all of the submitted information is confidential 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, 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. *See id.* § 182.051(4); *see also Open Records Decision No. 625 (1994) (construing statutory predecessor)*.

You state, and have provided documentation reflecting, that the submitted information relates to a customer who has requested confidentiality for the customer’s personal, usage, and billing information under section 182.052. You also state that the primary source of water for the utility was not a sole source aquifer. You do not indicate, nor does it otherwise appear to this office, that any exception to confidentiality under section 182.052 is applicable in this instance. *See Util. Code § 182.054*. We note, however, that you do not inform us whether the customer in question requested confidentiality for the information at issue before the city received the present request for information. Furthermore, you do not inform us

whether the customer requested confidentiality for both of the addresses that are contained in the submitted information. We therefore conclude that the city must withhold the address or addresses for which the customer requested confidentiality and the billing and usage information under section 552.101 of the Government Code in conjunction with section 182.052(a) of the Utilities Code if the customer requested confidentiality prior to the city's receipt of the present request for information. We have marked the information that the city may be required to withhold. If the customer did not timely request confidentiality for any of the marked information, then any such information is not excepted from disclosure and must be released. In either case, the city must release the rest of the requested information.

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).

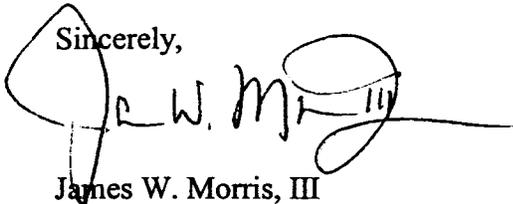
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Dep't of Pub. 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 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,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is written in a cursive style with a long horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/seg

Ref: ID# 177776

Enc: Submitted documents

c: Mr. Chris Spruce
Winstead Sechrest & Minick
100 Congress Avenue, Suite 800
Austin, Texas 78701
(w/o enclosures)