



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 2, 2003

Ms. Mia Settle-Vinson
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77002

OR2003-8613

Dear Ms. Settle-Vinson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 191736.

The City of Houston (the "city") received a request for access to the city's water customer service computer database. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.101 of the Government Code 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. Section 182.052 of the Utilities Code provides in relevant 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

¹ 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.

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.

"Personal information" under section 182.052(a) means an individual's address, telephone number, or social security number. Util. Code § 182.051(4). Water service is included in the scope of utility services covered by section 182.052. Util. Code § 182.051(3). We note that the information at issue contains a customer's address, telephone number, social security number, and volume or units of utility usage.

We first address the public availability of the personal information appearing in the submitted information. You state that the customers at issue requested that "personal information" in utility account records be kept confidential. However, based on the information you provided, we are unable to determine if the elections for privacy were made prior to the date the city received the present request. Therefore, to the extent that the customers timely elected to keep their personal information private, we determine that the city must withhold the customers' addresses, telephone numbers, and social security numbers under section 552.101 of the Government Code in conjunction with section 182.052(a) of the Utilities Code.²

We next address the public availability of the customers' volume or units of utility usage. We are unable to determine from the information provided whether the customers at issue timely requested that usage information be kept confidential. Furthermore, section 182.052(a) of the Utilities Code provides that the utility may disclose a customer's usage information, notwithstanding the customer's request for confidentiality, if the primary source of water for such utility is a sole-source designated aquifer. We are also unable to determine from the information provided whether the primary source of water for the city's utility is a sole-source designated aquifer. Therefore, we make the following determination: if the primary source of water for the city utility is not a sole-source designated aquifer, and if the customers at issue requested that usage information be kept confidential prior to the date the city received the present request, we determine that such information is confidential under section 182.052 of the Utilities Code and must be withheld. *See* Open Records Decision No. 625 (1994) (construing statutory predecessor). If, however, the primary source of water is a sole-source aquifer, and the customers timely requested that usage information be kept confidential, the city has the discretion to release usage information, notwithstanding the customers' requests for confidentiality. Finally, in either circumstance, if the customers at issue did not timely elect to keep usage information confidential, then the city must release usage information to the requestor.

² We note that none of the exceptions to confidentiality listed in section 182.054 apply in this instance.

The submitted information contains a Texas driver's license number that is subject to section 552.130 of the Government Code. Section 552.130 provides in pertinent part:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Accordingly, the city must withhold the marked Texas motor vehicle information pursuant to section 552.130.

The information in the submitted information contains a bank account number and a bank route number that are subject to section 552.136 of the Government Code. Section 552.136 provides in relevant part:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Accordingly, the city must withhold the marked bank account number and bank route number pursuant to section 552.136.

In summary, to the extent the election for privacy was timely made, the city must withhold personal information under section 552.101 of the Government Code in conjunction with section 182.052(a) of the Utilities Code. If the primary source of water for the city utility is not a sole-source aquifer and the customers timely elected to keep usage information confidential, then the city must withhold usage information under section 552.101 in conjunction with section 182.052. If the primary source of water for the city utility is a sole-

source aquifer and the proper timely election was made, the city has the discretion to release usage information. If the customers at issue did not timely request to keep utility account information confidential, the city must release usage information to the requestor. The city must withhold the marked Texas motor vehicle information under section 552.130. The city must withhold the marked bank account number and bank route number under section 552.136.

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 cursive script that reads "Amy Peterson". The signature is written in black ink and includes a small arrow pointing to the right at the end of the last name.

Amy D. Peterson
Assistant Attorney General
Open Records Division

ADP/sdk

Ref: ID# 191736

Enc. Submitted documents

c: Mr. Daniel Cooper
H2O Pro, Inc.
P.O. Box 262566
Houston, Texas 77207
(w/o enclosures)