



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 8, 2004

Mr. Ignacio Perez
Assistant City Attorney
City of McAllen
P. O. Box 220
McAllen, Texas 78505-0220

OR2004-7647

Dear Mr. Perez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 209339.

The City of McAllen (the "city") received a request for information "which flags or identifies the names, addresses, or combination, of citizens whose water service provided by [the Public Utility Board] is not to be disconnected or disturbed under any circumstances" over a specified time period. You state that the city is releasing some of the requested information to the requestor. However, you claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.¹

Section 552.101 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

¹We note that one of the submitted documents, which we have marked, is not responsive to the request for information. Thus, we do not address your arguments under section 552.101 of the Government Code in conjunction with federal law and common law privacy, and this document need not be released.

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.

Util. Code § 182.051(a). A customer may request confidentiality of their personal information by returning to the government-operated utility an appropriately marked form that must be included in the customer's bill. *See id.* § 182.052(b), (c). "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). We note that the names of customers are not included in the definition of personal information, and therefore are not confidential under section 182.052 of the Utilities Code. Water service is included in the scope of utility services covered by section 182.052. Util. Code § 182.051(3). However, section 182.052 is applicable only to an individual and does not protect information relating to a corporation, partnership, or other business entity. *See* Open Records Decision No. 625 at 4-5 (1994) (construing statutory predecessor). In this instance, it appears that some of the records at issue pertain to a utility customer that is a business entity and not an individual. If so, section 182.052 is inapplicable to this information, and the city may not withhold it on this basis. If this information does not pertain to a business entity, and in regard to the remaining responsive information, we conclude that if the election for privacy was made prior to the date the city received the present request, the city must withhold the customers' addresses based on section 552.101 of the Government Code in conjunction with section 182.052(a) of the Utilities Code. As the request was solely for names and addresses, the remainder of the submitted information is nonresponsive and need not be released in response to this request.

In summary, we conclude that: 1) if the election for privacy was made prior to the date the city received the present request, the city must withhold the customers' addresses based on section 552.101 of the Government Code in conjunction with section 182.052(a) of the Utilities Code; and 2) if any of the responsive information pertains to a business entity, the entity's address must be released. As you make no additional arguments, the responsive names must be released.

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,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/krl

Ref: ID# 209339

Enc: Submitted documents

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(w/o enclosures)