



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 11, 2005

Ms. Mia Settle-Vinson
Assistant City Attorney
City of Houston Legal Department
P. O. Box 1562
Houston, Texas 77251-1562

OR2005-00335

Dear Ms. Settle-Vinson:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 216836.

The City of Houston (the "city") received a request for "a list of all customers that have lawn meters for their irrigation systems." You claim that addresses, telephone numbers, social security numbers, and utility usage information contained in the requested information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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:

¹We 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.

(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.

"Personal information" under section 182.052(a) means an individual's address, telephone number, or social security number. Util. Code § 182.051(4). We note that "personal information" does not include a customer's name. Water service is included in the scope of utility services covered by section 182.052. *Id.* § 182.051(3).

You state that the city's Public Works and Engineering Department is a government-operated utility. You further state that the customers at issue requested that "personal information" in their utility account records be kept confidential prior to the city's receipt of the request for information. However, section 182.052(a) provides that the utility may disclose a customer's billing 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 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: because the customers at issue requested that billing information be kept confidential prior to the date the city received the present request, if the primary source of water for the city utility is not a sole-source designated aquifer, we determine that the named customers' addresses and corresponding billing information are 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, the city has the discretion to release the billing information, notwithstanding the customers' timely requests for confidentiality. The city must release all remaining 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/krl

Ref: ID# 216836

Enc. Submitted documents

c: Mr. Chad Touchet
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(w/o enclosures)