



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 25, 2005

Ms. Rebecca Brewer
Abernathy, Roeder, Boyd & Joplin, P.C.
P.O. Box 1210
McKinney, Texas 75070-1210

OR2005-03510

Dear Ms. Brewer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 225770.

The City of Frisco (the "city"), which you represent, received a request for information concerning the volume of water usage of a specified business during a specified time period. 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 reviewed the submitted information.

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 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 account record at issue contains the name, telephone number, billing address, and social security number of the individual listed on the account during the time period in question, as well as information concerning the volume of usage and amounts billed or collected. However, we further note that the requestor specifically asks only for the volume of water used by the business and expressly states that the request does not encompass other information that may be confidential. We therefore determine that information other than the volume of usage that appears in the submitted account records, including the customer’s personal information and information concerning amounts billed or collected, is not responsive to the request and need not be released at this time.

We next address the public availability of the requested information concerning volume of water usage. While you have submitted documentation showing that the customer at issue requested that personal information on the account be kept confidential, we note that “personal information” under section 182.052(a) of the Utilities Code does not include information concerning volume of usage. Util. Code § 182.051(4). Thus, we are unable to determine from the information provided whether the customer at issue timely requested that water usage information be kept confidential. Furthermore, section 182.052(a) of the Utilities Code provides that the utility may disclose a customer’s water 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 customer at issue requested that water 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 customer timely requested that water usage information be kept confidential, the city has the discretion to release water usage information, notwithstanding the customer’s request for confidentiality. Finally, in either circumstance, if the customer at issue did not timely elect to keep water usage information confidential, then the city must release water usage information to the requestor. We have marked the water usage information in the submitted account records that may be confidential pursuant to 182.052(a) of the Utilities Code.

In summary, if the primary source of water for the city utility is not a sole-source aquifer and the customer timely elected to keep water usage information confidential, then the city must withhold water 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 water usage

information. If the customer at issue did not timely request to keep water usage information confidential, the city must release the requested water usage information to the requestor. We have marked information that may be confidential under section 552.101 in conjunction with section 182.052 of the Utilities Code. The remainder of the submitted information is not responsive to the present request and need not 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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 ten calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'DS', with a long horizontal flourish extending to the right.

David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 225770

Enc: Submitted documents

c: Mr. John A. Rodgers
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(w/o enclosures)