ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 22, 2005

Ms. Evelyn Rockhold
Westminster Water Supply Corporation
P.O. Box 819
Westminster, Texas 75485

OR2005-07582

Dear Ms. Rockhold:

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# 230995.

The Westminster Water Supply Corporation (the "corporation") received a request for information pertaining to the corporation's accumulated transaction journal. 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.[1] We have also received and considered the requestor's comments. *See* Gov't Code § 552.304.

Initially, we must address whether this issue can be resolved in the open records process. You inform us that the requestor is a member of the corporation's board of directors. In Attorney General Opinion JM-119 (1983), this office addressed a similar situation where a member of the board of trustees of the Alamo Community College requested, and was then denied, access to certain records held by the district. This office concluded that

[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.

> when a trustee of a community college district, acting in his official capacity, requests information maintained by the district, he is not a member of the 'public' for purposes of the Open Records Act. On the contrary, he is a member of the board which at least constructively maintains all records in the district's possession . . . .
>
> Because such a trustee is not merely a member of the public, his request for records in the district's possession cannot, in our opinion, be treated as a request for information under the Open Records Act.

Attorney General Opinion JM-119 at 2 (1983) (emphasis in original), *reaffirmed in* Attorney General Opinion JC-0120 (1999). Attorney General Opinion JM-119 then went on to conclude that although the Act governs the release of information to members of the general public,

> [i]t cannot, in our view, control the right of access of a member of a governmental body to information in that governmental body's possession. Since the governmental body – in this instance the board of trustees of the district – at least constructively maintains records in the district's possession, we believe it logically follows that a member of that board has an inherent right of access to such records, *at least when he requests them in his official capacity.*

Id. at 3 (emphasis added).

Consequently, whether the requestor in this instance has a right of access to the requested information depends on whether he is seeking the reports in his official capacity. We do not have sufficient information to determine if the requestor is seeking the reports in his official capacity or as a member of the public. Therefore, we will address your arguments concerning the exception you claim.

However, we must first address the corporation's obligations under the Act. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(a), (b). It appears from the documents that the corporation received this request on June 6, 2005. However, you did not request a ruling from this office or supply the requested information until June 23, 2005. Consequently, we find that the corporation failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless a compelling reason

exists to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Generally speaking, a compelling reason exists when third party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Because section 552.101 can provide a compelling reason to withhold information, we will address your arguments concerning this exception.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that another statute makes confidential. This section encompasses confidentiality provisions such as section 182.052 of the Utilities Code, which provides as follows:

> (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.

Util. Code § 182.052(a). We note that water service is included in the scope of utility services covered by section 182.052. *See id.* § 182.051(3). For the purposes of section 182.052, "personal information" 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). The names of customers are not included in the definition of personal information under section 182.051(4), and thus customers' names are not confidential under section 182.052. Under section 182.054, there are six statutory exceptions to section 182.052(a)'s prohibition of disclosure. *See* Util. Code § 182.054. You have provided no information that would permit this office to conclude that any of these exceptions is applicable in this instance.

We understand you to represent that the addresses and telephone numbers contained in the submitted documents are those of customers of the corporation. You inform us that certain customers signed written requests for confidentiality for their addresses and telephone numbers under section 182.052 before the corporation received the present request for information. *See* Open Records Decision No. 625 at 7 (utility billing information must be released unless customer requests confidentiality before utility receives request for information). Thus, to the extent that the submitted addresses and telephone numbers are

those of customers of the corporation who requested confidentiality for their personal information before the corporation received the present request for information, the addresses and telephone numbers of such customers must be withheld from disclosure under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code. But to the extent that the submitted addresses and telephone numbers are those of customers who did not request confidentiality for their personal information before the corporation received this request, the addresses and telephone numbers of such customers are not excepted from disclosure under section 552.101 in conjunction with section 182.052 of the Utilities Code and must be released to the requestor. In any event, the corporation must release all of the submitted information that does not consist of customers' addresses and telephone numbers.

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); *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,

Jaime L. Flores
Assistant Attorney General
Open Records Division

JLF/seg

Ref: ID# 230995

Enc. Submitted documents

c: Mr. Alvie Baucom
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(w/o enclosures)