



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 15, 2005

Mr. Brett L. Bigham
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OR2005-10276

Dear Mr. Bigham:

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# 236393.

The Buena Vista Bethel Special Utility District (the "district"), which you represent, received a request for information regarding water service, including information regarding district employees and board members, district procedures and practices, other related information, and answers to various questions. You contend that the Act does not require the district to respond to the requestor's questions and claim that the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

¹We also note that you have redacted social security numbers. See Gov't Code § 552.147 (added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, ch. 397, 2005 Tex. Sess. Law Serv. 1091 (Vernon) (to be codified at Tex. Gov't Code § 552.147)). Section 552.147(b) provides that a governmental body may redact social security number from public release without necessity of requesting decision from this office under the Act.

²We 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.

First, the Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). Here, the requestor is asking the district to answer numerous factual questions. We conclude that the district is not required by the Act to respond to these questions.

Next, we must address the district's procedural obligations under section 552.301 of the Government Code. Subsections 552.301(a) and (b) provide as follows:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [Act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

Gov't Code § 552.301(a), (b). Furthermore, pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld; (2) a copy of the written request for information; (3) a signed statement or sufficient evidence showing the date the governmental body received the written request; and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents.

Although you do not inform us when the district received the request for information, we note that it is dated April 4, 2005. *See* Gov't Code § 552.301(e)(1)(C) (a governmental body is required to submit to this office within fifteen business days of receiving an open records request a signed statement or sufficient evidence showing the date the governmental body received the written request). However, you did not request a decision from or submit the required information to this office until September 10, 2005. Thus, we find that the district failed to comply with the procedural requirements of section 552.301 of the Government Code.

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 the governmental body demonstrates a compelling reason 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). Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Section 552.103 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, the district's claim under section 552.103 is not a compelling reason for non-disclosure under section 552.302, and none of the information at issue may be withheld on that basis. *See* Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). However, section 552.101 can provide a compelling reason to withhold information, and we will consider your arguments regarding this exception.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information another statute makes confidential. You assert that the requested information is confidential under section 182.052 of the Utilities Code. Section 182.052 provides, in relevant part 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.

(b) A customer may request confidentiality by delivering to the government-operated utility an appropriately marked form provided under Subsection (c)(3) or any other written request for confidentiality.

Util. Code § 182.052(a)-(b). "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). Water service is included in the scope of utility services covered by section 182.052. Util. Code § 182.051(3). Section 182.054 of the Utilities Code provides six exceptions to the disclosure prohibition found in section 182.052. *See id.* § 182.054.

The submitted information includes utility records that contain the names of utility customers, as well as information relating to utility usage or the amounts billed to or collected from the customers for utility usage. We note that a customer's name is not included in the definition of personal information, and therefore is not confidential under section 182.052 of the Utilities Code. You inform us that some of the customers at issue timely elected to keep the public utility information confidential under section 182.052(a) of the Utilities Code. 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 district is a sole-source designated aquifer. Therefore, if the primary source of water for the district is not a sole-source designated aquifer, the utility usage and billing amounts of a customer who made a timely request for confidentiality are confidential under section 182.052 of the Utilities Code and must generally be withheld under section 552.101 of the Government Code on that basis. *See* Open Records Decision No. 625 (1994) (construing statutory predecessor). If, however, the primary source of water is a sole-source aquifer, the district has the discretion to release the utility usage and billing information, notwithstanding the customer's timely request for confidentiality.

We also note, however, that the submitted information includes the requestor's personal information. Section 182.052(d) of the Utilities Code states that "[a] customer may rescind a request for confidentiality by providing the government-operated utility written permission to disclose personal information." Util. Code § 182.052(d). It is implicit from the language of this section that the district is not prohibited from releasing the customer's own personal information if the customer provides permission to do so. *See id.*; *see also id.* § 182.054(5) (personal information may be released to person for whom the customer has contractually waived confidentiality for personal information). As the requestor's written request encompasses his own personal information, we conclude that the requestor has provided written permission for the district to disclose the requestor's personal information to him. Thus, because the district has permission to do so, it must release the requestor's personal information in this instance. Otherwise, none of the exceptions in section 182.054 appear to apply to the remaining information in the submitted utility records.

Next, we note that portions of the remaining information may be subject to sections 552.117 and 552.136 of the Government Code.³ First, section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under

³The Office of the Attorney General will raise mandatory exceptions like sections 552.117 and 552.136 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987). We also note that sections 552.117 and 552.136 can provide compelling reasons to withhold information for purposes of section 552.302.

section 552.024. An individual's work telephone number is excepted from disclosure on this basis. We also note that an individual's personal post office box number is not a "home address" for purposes of section 552.117, and therefore may not be withheld under this section. *See* Open Records Decision No. 622 at 4 (1994) (purpose of section 552.117 is to protect public employees from being harassed at home); *see also* Open Records Decision No. 658 at 4 (1998) (statutory confidentiality provision must be express and cannot be implied). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). As such, the district must withhold the information we have marked pursuant to section 552.117(a)(1) for district employees who made an election to keep such information confidential prior to the date on which the district received this request for information.⁴

Section 552.136 of the Government Code states that "[n]otwithstanding 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." Gov't Code § 552.136. We note that one of the account numbers belongs to the requestor who has a special right of access to his own account number. *See* Gov't Code § 552.023 (person has a special right of access to information that is excepted from public disclosure under laws intended to protect that person's privacy interest). Therefore, other than the requestor's account number, the district must withhold the remaining account numbers pursuant to section 552.136.

In summary, if the primary source of water for the district is not a sole-source designated aquifer, the utility usage and billing amounts of a customer who made a timely request for confidentiality are confidential under section 182.052 of the Utilities Code and, except for the information relating to the requestor, must be withheld under section 552.101 of the Government Code on that basis; the district must release the requestor's personal information to him pursuant to section 182.052(d) of the Utilities Code. If, however, the primary source of water is a sole-source aquifer, the district has the discretion to release the utility usage and billing information, notwithstanding any customers' timely requests for confidentiality. The information we have marked must be withheld pursuant to section 552.117(a)(1) of the Government Code for district employees who made a timely election to keep such information confidential. Other than the requestor's account number, the district must

⁴We note that some of information pertaining to district employees also appears in the submitted utility records. We note that this information is not subject to section 552.117 since such records are not held by the district in its capacity as the employer of the individuals at issue. As such, to the extent this information is not excepted from disclosure under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code, it may not be withheld under section 552.117 and must be released.

withhold the account numbers pursuant to section 552.136 of the Government Code. The remaining submitted information must be released.⁵

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 ten 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 Office of the Attorney General at (512) 475-2497.

⁵Because some of this information is confidential with respect to the general public, if the district receives a future request for this information from a person other than the requestor or his authorized representative, the district should again seek our decision.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. 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,



Robert B. Rapfogel
Assistant Attorney General
Open Records Division

RBR/krl

Ref: ID# 236393

Enc. Submitted documents

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(w/o enclosures)