



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 9, 2007

Ms. Gretchen Reuwer
Communications Manager
New Braunfels Utilities
P.O. Box 310289
New Braunfels, Texas 78131-0289

OR2007-01745

Dear Ms. Reuwer:

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# 271252.

New Braunfels Utilities ("NBU") received a request for information related to a specified address. You state that NBU has released some of the requested information. You claim that some of the requested information has been destroyed in accordance with NBU's records retention schedule. You claim that portions of the submitted information are 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 of the Government Code excepts from required public 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. You raise section 552.101 in conjunction with section 182.052 of the Utilities Code. This section provides in 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.

(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).

You do not inform this office whether, prior to NBU's receipt of the instant request, the customer at issue elected to keep his utility usage information confidential under section 182.052(a) of the Utilities Code. We note that section 182.052(a) provides that the utility may disclose a customer's utility 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 unable to determine from the information provided whether the primary source of water for NBU is a sole-source designated aquifer. Therefore, if the primary source of water for NBU is not a sole-source designated aquifer, provided that the customer made a timely request for confidentiality, his utility usage information is confidential under section 182.052 of the Utilities Code and must be withheld under section 552.101 on that basis. *See* ORD 625. If, however, the primary source of water is a sole-source aquifer, NBU has the discretion to release the utility usage information, notwithstanding the customer's timely request for confidentiality.

The submitted information also includes customers' personal information. If these customers elected to keep their personal information confidential prior to the NBU's receipt of the instant request, the information we have marked is confidential under section 182.052(a) and must be withheld under section 552.101 on that basis. If the customers did not timely request confidentiality for this information, such information is not confidential under section 182.052(a) and may not be withheld on that basis. The remaining information must be released to the requestor.

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 Office of the Attorney General 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. 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,



L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/eb

Ref: ID# 271252

Enc. Submitted documents

c: Ms. Christie Krull
1936 Tiara Drive
New Braunfels, Texas 78130
(w/o enclosures)