



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 4, 2007

Ms. Diana L. Granger
Assistant City Attorney
Knight & Partners
223 West Anderson Lane, Suite A-105
Austin, Texas 78752

OR2007-11440

Dear Ms. Granger:

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# 288195.

The City of Leander (the "city"), which you represent, received a request for "a list of all active water tap accounts as of May 8 used in the population ordinance," including the account type, name, address, date the account became active, and subdivision. You state you have released some information to the requestor. We understand you to assert that some of the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered your arguments and reviewed the submitted representative sample of information.²

Initially, we address your assertion that the city does not maintain the information in the format requested. Specifically, you indicate that the report the city maintains "does not indicate the date the account became active or the subdivision." We note that the Act does not require a governmental body to disclose information that did not exist at the time the

¹While you cite House Bill 859 for your argument to withhold the information at issue, we understand you to raise section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code, as this is the proper exception for the substance of your argument.

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.

request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). Likewise, a governmental body is not required to produce the responsive information in the format requested, a list, or create new information to respond to the request for information. *AT&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 676 (Tex. 1995); *Fish v. Dallas Indep. Sch. Dist.*, 31 S.W.3d 678, 681 (Tex. App.—Eastland, pet. denied); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3, 342 at 3 (1982), 87 (1975). However, a governmental body must make a good-faith effort to relate a request to information that is within the governmental body's possession or control. See Open Records Decision No. 561 at 8-9 (1990). Thus, to the extent this requested information exists in any format, it may only be withheld if an exception to disclosure is applicable. Accordingly, we will consider your argument against the disclosure of the submitted information.

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 protected by other statutes. Section 182.052 of the Utilities Code 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).

You state that the submitted information relates to customers who have requested that their accounts be kept confidential. You do not inform us, however, whether the customers at issue did so prior to the city's receipt of this request for information. See ORD 625 at 7. Likewise, you do not indicate whether the city's primary source of water is a sole-source designated aquifer. Nevertheless, if the city's primary source of water is not a sole-source designated aquifer, and if the customers in question timely requested confidentiality for their

personal and utility usage information, then the city must withhold the information at issue under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code. If the city's primary source of water is a sole-source designated aquifer, then the city has discretion to release the usage information, notwithstanding the customers' requests for confidentiality. If the customers at issue did not timely request confidentiality, then no portion of the information at issue may be withheld under section 552.101 in conjunction with section 182.052.

We note that the remaining submitted information includes account numbers that are excepted from disclosure under section 552.136 of the Government Code.³ Section 552.136 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. The city must therefore withhold the account numbers in the information at issue under section 552.136 of the Government Code.

In summary, the city must withhold both the utility usage information and the customers' addresses under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code, provided that the customers at issue made timely requests for confidentiality and that the primary source of water for the city is not a sole-source designated aquifer. The city also must withhold the account numbers under section 552.136 of the Government Code. The remaining submitted information must be released to the requestor.

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).

³The Office of the Attorney General will raise a mandatory exception like section 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).

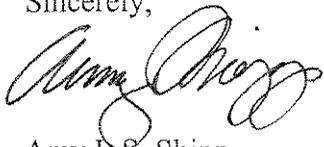
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/mcf

Ref: ID# 288195

Enc. Submitted documents

c: Mr. David Moore
409 Lake Side Drive
Georgetown, Texas 78628
(w/o enclosures)