



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 23, 2008

Ms. Gloria Gardiner
Winkler Water Supply Corporation
2038 Loper Drive
Streetman, Texas 75859

OR2008-08509

Dear Ms. Gardiner:

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# 313553.

The Winkler Water Supply Corporation (the "corporation") received a request for a complete mailing list of all members as well as the minutes from board meetings held during specified years. You state that the corporation will release the minutes from the annual meetings held in 2004, 2005, 2006, and 2007. You state that the corporation does not have the requested 2008 minutes.¹ You claim that the submitted 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.²

¹We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dism'd); Open Records Decision No. 452 at 3 (1986).

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.

We note that, with the exception of the customer names and addresses, the submitted information is not responsive to the request. Thus, this ruling does not address the public availability of any of the information other than the customer names and addresses, and the non-responsive information need not be released.

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). We note that the names of customers are not included in the definition of personal information, and therefore are not confidential under section 182.052 of the Utilities Code. Water service is included in the scope of utility services covered by section 182.052. Util. Code § 182.051(3). A customer's request for confidentiality must precede the corporation's receipt of the request for information. Open Records Decision No. 625 at 6 (1994) (construing statutory predecessor).

You state that the submitted information relates to customers who have requested that their personal information be kept confidential. You do not inform us, however, whether the customers at issue did so prior to the corporation's receipt of this request for information. *See* ORD 625 at 7. Likewise, you do not indicate whether the corporation's primary source of water is a sole-source designated aquifer. Nevertheless, if the corporation's primary source of water is not a sole-source designated aquifer, and if the customers in question timely requested confidentiality for their personal information, then the corporation must withhold the submitted personal information under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code. If the corporation's primary source of water is a sole-source designated aquifer, then the corporation has the discretion

to release the customers' personal 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. The corporation must release the customer names 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,

A handwritten signature in black ink that reads "Olivia A. Maceo". The signature is written in a cursive style with a large initial "O".

Olivia A. Maceo
Assistant Attorney General
Open Records Division

OM/mcf

Ref: ID# 313553

Enc. Submitted documents

c: Mr. W. Frank Moore
c/o Ms. Gloria Gardiner
Winkler Water Supply Corporation
2038 Loper Drive
Streetman, Texas 75859
(w/o enclosures)