



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 12, 2008

Mr. Randall P. Gunter
Fielder & Gunter
P.O. Box 1265
Dayton, Texas 77535-1265

OR2008-10993

Dear Mr. Gunter:

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# 318573.

The City of Liberty (the "city"), which you represent, received a request for a list of all persons who have had their city utilities terminated as a result of non-payment for a specified time period. You state that some information will be released to the requestor. You also state that the city does not maintain a simple list of those citizens who have had their utilities turned off for non-payment.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 representative sample of information.²

¹We note that the Act does not require a governmental body to answer general questions, release information that did not exist when the request was received, or create new information responsive to the request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983). However, we also note that a governmental body has a duty to make a good faith effort to relate a request for information to information that the governmental body holds. Open Records Decision No. 561 (1990).

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.

Section 552.101 of the Government Code exempts 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 82.051(3). A customer's request for confidentiality must precede the city's receipt of the request for information. Open Records Decision No. 625 at 6 (1994) (construing statutory predecessor). Upon review of the submitted document, we find that it only contains the customer name and does not contain any "personal information." Furthermore, we find that the submitted document does not contain information relating to the volume or units of utility usage or the amounts billed to or collected from the individual for utility usage. Therefore, no portion of the submitted information may be withheld under section 52.101 in conjunction with section 182.052 of the Utilities Code.

We note that the submitted information contains account numbers that are subject to 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

³The Office of the Attorney General will raise a mandatory exception of the Government Code on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

confidential.” Gov’t Code § 552.136. The city must, therefore, withhold the account numbers we have marked under section 552.136 of the Government Code.

In summary, the city must withhold the account numbers we have marked under section 552.136 of the Government Code. The remaining 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 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). If the governmental body does not file suit over 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,



Bill Longley
Assistant Attorney General
Open Records Division

BL/eeg

Ref: ID# 318573

Enc. Submitted documents

c: Ms. Freida Hernandez
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(w/o enclosures)