



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 22, 2009

Ms. Cara Leahy White  
Taylor, Olsen, Adkins, Sralla, & Elam, L.L.P.  
6000 Western Place, Suite 200  
I-30 at Bryant-Irvin Road  
Fort Worth, Texas 76107-4654

OR2009-05360

Dear Ms. White:

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# 340525.

The City of Southlake (the "city"), which you represent, received two requests for information revealing the name of the customer receiving utilities services at a specified address. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.137, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the requests only seek information that would reveal the name of the customer at issue. Upon review, the only information on the submitted utility service request form that is responsive to the instant requests is the customer's name. Thus, the remaining information on the submitted utility service request form is not responsive to the requests. This ruling does not address the public availability of any information that is not responsive to the requests, and the city is not required to release that information in response to the requests.<sup>1</sup> We will, however, address your arguments against disclosure of the customer name.

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<sup>1</sup>As the information on the submitted utility service request that would be subject to sections 552.137 and 552.147 of the Government Code is not responsive, we do not address your arguments under these sections.

Section 552.101 of the Government Code excepts from 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 other statutes make confidential, such as section 182.052 of the Utilities Code, which 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, but does not include the individual's name. *See id.* § 182.051(4); *see also* Open Records Decision No. 625 (1994) (construing statutory predecessor). You assert that the customer name in the submitted document is confidential under section 182.052 because the "subject of the requests attempted to properly secure the confidentiality of utility records and a written request was promptly received by the city." However, as discussed above, the "personal information" protected under section 182.052 does not include the individual customer's name. *See id.* Thus, the customer's name is not confidential under section 182.052 of the Utilities Code. Accordingly, the city may not withhold the customer's name under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code.

Next, you contend that the responsive information is confidential pursuant to common-law privacy, including the "special circumstances" aspect of common-law privacy. Section 552.101 of the Government Code also encompasses the common-law right of privacy. Common-law privacy protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. In Open Records Decision No. 169 (1977), this office recognized that information that would ordinarily be subject to disclosure may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy on a showing of "special circumstances."

This office considers such "special circumstances" to refer to a very narrow set of situations in which release of the information at issue would likely cause someone to face "an imminent threat of physical danger." ORD 169 at 6. "Special circumstances" do not include "a generalized and speculative fear of harassment or retribution." *Id.* You state that the subject customer at issue "reported being fearful for the subject's personal safety if the information was released." After reviewing your arguments and the responsive information, we find you have failed to demonstrate that release of the customer's name would cause an imminent threat of physical danger to the customer. Thus, none of the responsive information may be withheld based on "special circumstances." Further, upon review, we find that you have failed to establish that the customer's name is highly intimate or embarrassing and of no legitimate public interest. Thus, the customer's name is not confidential under common-law privacy, and the city may not withhold it under section 552.101 of the Government Code on that ground.

Section 552.101 also encompasses constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently; and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected under constitutional privacy is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985)). You indicate that the responsive information may be excepted from disclosure under section 552.101 in conjunction with constitutional privacy. Upon review of the responsive information, we conclude that none of the information at issue comes within one of the constitutional zones of privacy or involves the most intimate aspects of human affairs. Therefore, the customer's name may not be withheld under section 552.101 on the basis of constitutional privacy. As no further exceptions against its disclosure are raised, the customer's name on the submitted utility service request form must be released to the requestors.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in cursive script, appearing to read "Laura E. Ream".

Laura E. Ream  
Assistant Attorney General  
Open Records Division

LER/dls

Ref: ID# 340525

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)