



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 29, 2009

Ms. Kaythie Darnell
City Clerk
City of Baytown
P.O. Box 424
Baytown, Texas 77522-0424

OR2009-10486

Dear Ms. Darnell:

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# 350530.

The City of Baytown (the "city") received a request for the water usage history for a specified address during a specified time period. You claim portions of the submitted information are exempted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that a portion of the submitted information is not responsive to the present request because it was created after the date that the city received the request. Additionally, in this instance, the requestor is seeking information pertaining to the water usage of a specified address during a particular time period. Therefore, any submitted information not pertaining to the water usage of the address at issue is not responsive to the present request, and need not be released in response to this request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed).

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:

(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.

Util. Code § 182.052(a). Water service is included in the scope of utility services covered by section 182.052. *Id.* § 182.051(3). Section 182.054 of the Utilities Code provides the following six exceptions to the disclosure prohibition found in section 182.052:

This subchapter does not prohibit a government-operated utility from disclosing personal information in a customer's account record to:

- (1) an official or employee of the state, a political subdivision of the state, or the United States acting in an official capacity;
- (2) an employee of a utility acting in connection with the employee's duties;
- (3) a consumer reporting agency;
- (4) a contractor or subcontractor approved by and providing services to the utility, the state, a political subdivision of the state, or the United States;
- (5) a person for whom the customer has contractually waived confidentiality for personal information; or
- (6) another entity that provides water, wastewater, sewer, gas, garbage, electricity, or drainage service for compensation.

You have submitted documentation showing that the customer whose water usage is at issue requested that the utility record information on the account be kept confidential. However, you have not informed our office, and we are unable to determine from the information provided, whether the customer elected to keep water usage information confidential prior to the date on which the city received the current request.

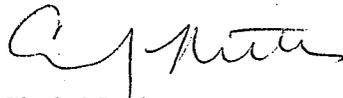
You state that the primary source of water for the city's utility services is not a sole-source designated aquifer. Therefore, we make the following determination: if the customer at

issue requested that water usage information be kept confidential prior to the date the city received the present request, we determine that such information is confidential under section 182.052 of the Utilities Code and must be withheld under section 552.101 of the Government Code. *See* Open Records Decision No. 625 (1994) (construing statutory predecessor). However, if the customer at issue did not request that water usage information be kept confidential prior to the date the city received the present request, the information at issue is not confidential under section 182.052 of the Utilities Code and may not be withheld under section 552.101 of the Government Code on that basis. In that case, the information at issue must be released.

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, 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 350530

Enc. Submitted documents

c: Requestor
(w/o enclosures)