ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 9, 2009

Mr. Charles L. Lacallade
Brown & Lacallade, P.C.
Attorneys for 3G Water Supply Corporation
P.O. Box 1956
Kingsland, Texas 78639

OR2009-14332

Dear Mr. Lacallade:

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# 357993.

3G Water Supply Corporation (the "corporation"), which you represent, received two requests for several categories of information related to the operations of the corporation. We understand that you have released some of the requested information to the requestors. You state that the corporation will redact social security numbers pursuant to section 552.147 of the Government Code.[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] We have also received and considered comments submitted by one of the requestors. *See* Gov't Code § 552.304 (providing that an interested party may submit comments stating why information should or should not be released).

Initially, we must address the corporation's obligations under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in

[1]Section 552.147(b) authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

[2]We 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.

asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b) of the Government Code, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See id.* § 552.301(b). Under section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). In this instance, you state, and the submitted information reflects, that the corporation received the requests for information on May 6, 2009 and July 13, 2009. However, you did not request a ruling from this office or submit any of the information required by section 552.301(e) until August 5, 2009. Thus, we find the corporation failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See City of Dallas v. Abbott*, 279 S.W.3d 806 (Tex. App.—2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *see also* Open Records Decision No. 319 (1982). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We also note that some of the submitted information is excepted from disclosure under section 552.136 of the Government Code.[3] Because sections 552.101 and 552.136 can provide compelling reasons for non-disclosure, we will consider the applicability of these exceptions to the submitted information.

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 section encompasses information made confidential by other statutes. Prior decisions of this office have held that section 6103(a) of title 26 of the United States Code renders tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); 226 (1979) (W-2 forms). Section 6103(b) defines the term "return information" as "a taxpayer's identity, the nature, source, or amount of income, payments, . . . tax withheld, deficiencies, overassessments, or tax payments . . . or any other data,

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

received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Internal Revenue Service] with respect to a return or . . . the determination of the existence, or possible existence, of liability . . . for any tax, penalty, . . . or offense[.]" *See* 26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term "return information" expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp 748, 754 (M.D.N.C. 1989), aff'd in part, 993 F.2d1111 (4th Cir. 1993). Therefore, the corporation must withhold the submitted 1099 and W-2 forms pursuant to section 552.101 of the Government Code in conjunction with federal law.

Section 552.101 also encompasses section 301.081 of the Labor Code, which governs the release of employment information held by the Texas Workforce Commission (the "commission"). Section 301.081 provides in pertinent part as follows:

> (a) Each employing unit shall keep employment records containing information as prescribed by the commission and as necessary for the proper administration of this title. The records are open to inspection and may be copied by the commission or an authorized representative of the commission at any reasonable time and as often as necessary.
>
> (b) The commission may require from an employing unit sworn or unsworn reports regarding persons employed by the employing unit as necessary for the effective administration of this title.
>
> (c) Employment information thus obtained or otherwise secured may not be published and is not open to public inspection, other than to a public employee in the performance of public duties, except as the commission considers necessary for theproper administration of this title or as provided by commission rule and consistent with federal law.

Labor Code § 301.081. The submitted documents reflect that the corporation obtained certain employment information from the commission. Records that are confidential in the hands of the originating governmental body remain confidential when transferred to another governmental body. *See* Open Records Decision Nos. 674 at 4 (2001), 667 at 4 (2000); *see also* Attorney General Opinion H-836 (1976) (governmental bodies have need to maintain unrestricted flow of information, to effectuate state policy that governmental bodies cooperate in the efficient and economical administration of statutory duties). *But see* Attorney General Opinions DM-353 at 4 n. 6 (1995) (interagency transfer prohibited where confidentiality statute enumerates specific entities to which release of confidential information is authorized and where receiving agency is not among statute's enumerated entities), JM-590 (1986) (same); Open Records Decision No. 655 (1997) (same), 650 (1996) (transfer of confidential information to federal agency impermissible unless federal law requires its disclosure).

Upon review, we find that the information at issue is confidential under section 301.081 of the Labor Code while in the custody of the commission. Section 301.081 does not prevent transfer of the information to the corporation. Thus, pursuant to the intergovernmental transfer doctrine, we conclude that the information we have marked must be withheld under section 552.101 of the Government Code in conjunction with section 301.081 of the Labor Code.

Section 552.101 also encompasses section 182.052 of the Utilities Code, which provides in relevant part the following:

> (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) of the Utilities Code means an individual's address, telephone number, and social security number. *Id.* § 182.051(4); *see also* Open Records Decision No. 625 (1994) (construing statutory predecessor). We note that a post office box number is not an address for the purposes of section 182.052. We also note that a customer's name is not included in the definition of personal information, and therefore is not confidential under section 182.052. Water service is included in the scope of utility services covered by section 182.052. Util. Code § 182.051(3). Section 182.054 of the Utilities Code provides six exceptions to the disclosure prohibition found in section 182.052. *See* Util. Code § 182.054.

You state that the customers whose information is at issue timely requested confidentiality for their personal information under section 182.052. You do not indicate that any of the exceptions to confidentiality under section 182.054 apply in this instance. We understand that the primary source of water for the corporation's utility services is not a sole-source designated aquifer. Therefore, the personal information and water usage information for customers who have timely requested confidentiality is confidential under section 182.052 of the Utilities Code and must be withheld under section 552.101 of the Government Code. However, the remaining information in Exhibit F does not constitute personal information or information relating to the volume or units of utility usage or the amounts billed to or collected from the individual for utility usage. Thus, the corporation may not withhold any

of the remaining information in Exhibit F under section 552.101 in conjunction with section 182.052.

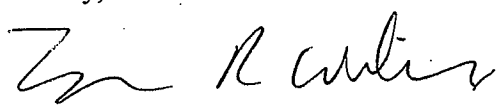
We note the remaining information contains utility account numbers excepted from disclosure under section 552.136 of the Government Code. Section 552.136 states "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b). An access device number is one that may be used to (1) obtain money, goods, services, or another thing of value, or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument, and includes an account number. *Id.* § 552.136(a). Accordingly, the corporation must withhold the account numbers, which we have marked, under section 552.136 of the Government Code.

In summary, the corporation must withhold the submitted 1099 and W-2 forms pursuant to section 552.101 of the Government Code in conjunction with federal law. The corporation must also withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 301.081 of the Labor Code. The information we have marked in Exhibit F is confidential under section 182.052 of the Utilities Code and must be withheld under section 552.101 of the Government Code. The corporation must withhold the account numbers, which we have marked, under section 552.136 of the Government Code. The remaining information 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, toll free, at (888) 672-6787.

Sincerely,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

Ref: ID# 357993

Enc. Submitted documents

c: Requestor
(w/o enclosures)