



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

January 12, 2010

Mr. Anthony S. Corbett  
Freeman & Corbett  
Attorney for Brush Creek Municipal Utility District  
8500 Bluffstone Cove, Suite B-104  
Austin, Texas 78759

OR2010-00604

Dear Mr. Corbett:

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# 365623.

The Brushy Creek Municipal Utility District (the "district"), which you represent, received a request for the names and addresses of individuals who registered as members of a swim team and received a district discount on their swimming pool fees. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.148 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the requestor seeks only names and addresses of swim team members receiving a swimming pool fee discount. Accordingly, any additional information is not responsive. The district need not release non-responsive information in response to this request, and this ruling will not address that information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W. 2d 266 (Tex. Civ. App.-San Antonio 1978, writ dism'd).

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 protected by other statutes. Section 182.052 of the Utilities Code 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) 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 a customer's name is not included in the definition of personal information, and therefore is not confidential under section 182.052 of the Utilities Code. Section 182.054 of the Utilities Code provides six exceptions to the disclosure prohibition found in section 182.052. *See id.* § 182.054.

You state that the district wishes to withhold the addresses of district customers who have timely requested confidentiality under section 182.052. You do not indicate that any of the exceptions to confidentiality under section 182.054 apply in this instance. You inform us that some customers have timely requested such confidentiality and provided a representative sample of such a request. Based on your representation and our review, we conclude the district must withhold the addresses of utility customers who requested confidentiality before the district received the request for information under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code.<sup>1</sup>

Section 552.101 of the Government Code also encompasses the doctrine of common law privacy, which 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). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual

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<sup>1</sup> Section 182.051(3) of the Utilities Code defines a government-operated utility as "a governmental body or an entity governed by a governmental body that, for compensation, provides water, wastewater, sewer, gas, garbage, electricity, or drainage service." Util. Code § 182.051(3).

organs. *Id.* at 683. You argue that some of the submitted information is protected under common-law privacy. You acknowledge that the district cannot cite any ruling or case law directly supporting this position. Upon review, we find the information at issue is not highly intimate or embarrassing and of no legitimate public interest. Therefore, you have failed to demonstrate how this information is protected under common-law privacy, and it may not be withheld under section 552.101 on that basis.

You also claim some of the submitted information is excepted under section 552.148 of the Government Code, which provides:

(a) In this section, “minor” means a person younger than 18 years of age.

(b) The following information maintained by a municipality for purposes related to the participation by a minor in a recreational program or activity is excepted from the requirements of Section 552.021:

(1) the name, age, home address, home telephone number, or social security number of the minor;

(2) a photograph of the minor; and

(3) the name of the minor’s parent or legal guardian.

Gov’t Code § 552.148(a)–(b). Section 552.148 specifically applies to “information maintained by a *municipality*[.]” Gov’t Code § 552.148(b) (emphasis added). You argue there is “no reason that the same information should be protected from release by a municipality but not another governmental entity that also conducts recreational programs.” Based on the plain language of section 552.148 of the Government Code, we disagree. See *Fitzgerald v. Advanced Spine Fixation Sys., Inc.*, 996 S.W.2d 864, 865-66 (Tex. 1999) (in interpreting statutes, goal of discerning legislature’s intent is served by beginning with statute’s plain language because it is assumed that legislature tried to say what it meant and its words are therefore surest guide to its intent); see also *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 324 (Tex App.—Austin 2002, no pet.) (citing *Sorokolit v. Rhodes*, 889 S.W.2d 239, 241 (Tex. 1994)) (in applying plain and common meaning of statute, one may not by implication enlarge meaning of any word beyond its ordinary meaning, especially when one can discern legislative intent from reasonable interpretation of statute as written). Because the district is not a municipality, section 552.148 of the Government Code will not apply in this instance, and the district may not withhold any information on this basis.

In summary, the district must withhold the addresses of utility customers who requested confidentiality under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code. The remaining responsive 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](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,



Mack T. Harrison  
Assistant Attorney General  
Open Records Division

MTH/rl

Ref: ID# 365623

Enc. Submitted documents

c: Requestor  
(w/o enclosures)