



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 5, 2010

Ms. Lupita Passement  
City Secretary  
City of San Benito  
401 North Sam Houston  
San Benito, Texas 78586

OR2010-06476

Dear Ms. Passement:

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# 378411.

The City of San Benito (the "city") received a request for "a water history" of four named individuals. Although you have not claimed any specific exceptions to disclosure, you ask this office whether any of the submitted information is excepted from disclosure under the Act. We have reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we must address the city's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See Gov't Code § 552.301(b)*. Under section 552.301(e), a governmental body is required to submit

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<sup>1</sup>We understand that the submitted information is a "sample" of the requested information. Therefore, 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.

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. *Id.* § 552.301(e). It appears the city received the request for information on February 11, 2010, but did not submit a request for a ruling until March 2, 2010. Further, the city has not raised any exceptions to disclosure, nor has it provided any arguments in support of any exceptions to disclosure. Thus, the city failed to comply with the procedural requirements mandated by section 552.301.

A governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. Of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). We note that portions of the submitted information may be subject to section 552.101 of the Government Code, which can provide a compelling reason to withhold information.<sup>2</sup> Therefore, we will address whether any of the submitted information is excepted from disclosure under section 552.101.

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. Section 552.101 encompasses information made confidential by other statutes, including section 182.052 of the Utilities Code, which 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

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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) includes 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). 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 id.* § 182.054.

In this instance, there is no indication that any of the exceptions listed in section 182.054 is applicable. We understand that the primary source of water for the city's utility services is not a sole-source designated aquifer. Therefore, the city must withhold the personal information and amounts billed information we have marked under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code to the extent that the customer at issue made a written request for the confidentiality of his information prior to the city's receipt of this request for information. *See* ORD 625 at 7 (character of requested information as public or not public must be determined at time request for information is made). To the extent that such customer did not make a written confidentiality request prior to the city's receipt of this request, the city must release the information we have marked. Regardless of any confidentiality requests, the remaining information does not constitute personal information or information relating to volume or units of utility usage or the amounts billed to or collected from the individual for utility usage; this information is not confidential under section 182.052, and the city may not withhold any portion of it under section 552.101 on that basis. As no other exceptions to disclosure have been raised, 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](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,

A handwritten signature in black ink that reads "Paige Lay". The signature is written in a cursive, flowing style.

Paige Lay  
Assistant Attorney General  
Open Records Division

PL/eeg

Ref: ID# 378411

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)