



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

September 27, 2010

Mr. Dustin Noska
Manager
Rock Island Water Supply Corporation
P.O. Box 144
Rock Island, Texas 77470

OR2010-14669

Dear Mr. Noska:

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# 394903.

The Rock Island Water Supply Corporation (the "corporation") received a request for twenty categories of information, including the corporation's (1) charter, by-laws, water tariff, annual minutes, and proxies; (2) annual reports, audits, as well as regular and special meetings minutes for the last three calendar years; (3) bank statements, canceled checks, lists of members and their addresses, meter readings, and a list of names and addresses of board members; (4) ledgers and savings account statements; (4) master meter readings; (5) reports filed with state and federal agencies, and income tax returns for the last three calendar years; and (6) a copy of the corporation's inventory list. We understand you to state the corporation does not possess annual audits, 2008 meeting minutes, ledgers, reports filed with state or federal agencies, income tax returns, and inventory lists.¹ You have released some information to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.136 of the Government Code.² We have

¹We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983). However, a governmental body must make a good faith effort to relate a request to information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). We assume the corporation made a good faith effort to identify the information that is responsive to the request.

²While you do not explicitly raise section 552.136 of the Government Code in your brief, based on your arguments we understand you to assert section 552.136.

considered the exceptions you claim and reviewed the submitted representative sample of information.³

First, we must address the corporation's procedural obligations under the Act. Section 552.301 of the Government Code prescribes the procedures 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) 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* Gov't Code § 552.301(b). Further, pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records 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)(1)(A)-(D). We understand the corporation received the request for information on May 19, 2010. However, you did not request a ruling until July 21, 2010. Further, you did not submit a copy or representative sample of some of the information requested until September 18, 2010. Accordingly, we conclude 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 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 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 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). 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* ORD 630. You assert portions of the submitted information are excepted from disclosure under sections 552.101 and 552.136 of the Government Code. Because sections 552.101 and 552.136 can provide compelling reasons against disclosure, we will address your arguments.

Next, we note the corporation did not submit any information responsive to the portion of the request which seeks the names and addresses of the corporation's board members. We

³We assume 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 those records contain substantially different types of information than that submitted to this office.

understand the corporation submitted a representative sample of information. Because no portion of the submitted representative sample pertains to the corporation's board members, we find the submitted information is not representative of the information sought in this part of the request. Please be advised that this open records letter applies to only the types of information you have submitted for our review. Therefore, this opinion does not authorize the withholding of any other requested records to the extent those records contain substantially different types of information than that submitted to this office. *See* Gov't Code § 552.302 (where request for attorney general decision does not comply with requirements of section 552.301, information at issue is presumed to be public). Because you have not submitted this information for our review, we assume you have released it. *See id.* §§ 552.301, .302. If you have not released this information, you must do so at this time.⁴

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 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). We note a post office box number is not an address for the purposes of section 182.052. Moreover, because section 182.052 is intended to protect

⁴We note section 552.024(c) of the Government Code authorizes a governmental body to redact, without the necessity of requesting a decision from this office, the home address, home telephone number, social security number, and family member information of a current or former official who elected to keep such information confidential prior to the governmental body's receipt of the request for information at issue. Gov't Code § 552.024(c). We note under section 552.024(c), names of officials may not be withheld. *See id.*; *see also id.* § 552.022(a)(2).

the safety and privacy of individual customers, this statute is applicable only to information pertaining to natural persons, and does not protect information relating to business, governmental, and other artificial entities. *See* ORD 625 at 4-5 (in context of section 182.051(4) of the Utility Code, "individual" means only natural persons and does not include artificial entities). 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.

You state portions of the submitted information are confidential under section 182.052. In this instance, there is no indication any of the exceptions listed in section 182.054 apply. You do not state whether the primary source of water for the corporation's utility services is a sole-source designated aquifer. As a result, if the corporation's primary source of water is not a sole-source designated aquifer, and the customer is a natural person who has timely elected to keep her billing and usage information confidential, the corporation must withhold the information we marked pursuant to section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code. If the customer did not timely request to keep the billing and usage information confidential, the corporation may not withhold this 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). Alternatively, if the corporation's primary source of water is a sole-source designated aquifer, then the corporation has discretion to release the information we marked, notwithstanding the customer's request for confidentiality. In any event, the remaining information you seek to withhold does not constitute personal information or information relating to volume or units of utility usage or the amounts billed to or collected from an individual for utility usage, and is therefore, not confidential under section 182.052. Consequently, the corporation may not withhold any portion of the remaining information under section 552.101 on that basis.

Section 552.136 of the Government Code provides that "[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. 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." *Id.* § 552.136(a). You marked a representative sample of the information you seek to withhold, consisting of a routing number, an account number, and a check number under section 552.136. We find the corporation must withhold the routing number and account number you marked under section 552.136.⁵ However, the check number you marked does not constitute an access

⁵We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including bank routing and account numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

device number. Therefore, the corporation may not withhold the marked check number under section 552.136.

In summary, if the primary source of water for the corporation's utility services is not a sole-source designated aquifer, the corporation must withhold the information we marked if it belongs to a customer who is a natural person under section 552.101 of the Government Code in conjunction with section 182.052 of the Utility Code, to the extent such customer made a written request for the confidentiality of this information prior to the corporation's receipt of this request for information. The corporation must withhold the bank routing and account numbers you 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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 394903

Enc. Submitted documents

c: Requestor
(w/o enclosures)