



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 4, 2010

Ms. Gretchen Reuwer
Communications Manager
New Braunfels Utilities
P.O. Box 310289
New Braunfels, Texas 78131-0289

OR2010-15020

Dear Ms. Reuwer:

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# 395575.

New Braunfels Utilities ("NBU") received a request for seven categories of information pertaining to the utility account of a named individual. You claim 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 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 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.

(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, 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, wastewater, garbage, and electricity services are included in the scope of utility services covered by section 182.052. Util. Code § 182.051(3). You indicate the submitted information pertains to these services. 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 the submitted information pertains to an individual customer who timely requested confidentiality under section 182.052. Upon review, we find the submitted information contains the personal information of and the amount billed to the customer at issue. You state, and we agree, none of the exceptions to confidentiality under section 182.054 apply in this instance. Therefore, we find NBU must withhold the personal information we have marked under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code. We note section 182.052(a) provides the utility may disclose amounts billed to or collected from a customer for utility usage, notwithstanding the customer's request for confidentiality, if the primary source of water for such utility is a sole-source designated aquifer. In this instance, we are unable to determine from the information provided whether the primary source of water for NBU is a sole-source designated aquifer. Therefore, if the primary source of water for NBU is not a sole-source designated aquifer, the amounts billed to or collected from the customer for utility usage are confidential under section 182.052 of the Utilities Code and must also be withheld under section 552.101 on that basis. *See* ORD 625. However, if the primary source of water is a sole-source aquifer, NBU has the discretion to release the amounts billed to or collected from the customer for utility usage, notwithstanding the customer's timely request for confidentiality. Additionally, you have failed to demonstrate the remaining information is confidential under section 182.052. Therefore, NBU may not withhold any portion of the remaining information at issue under section 552.101 on that basis.

The submitted documents also include information that is subject to section 552.136 of the Government Code.¹ Section 552.136 provides, "[n]otwithstanding any other provision of [the Act], 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." *Id.* § 552.136(b). Section 552.136(a) defines "access device" as "a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other

¹The 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).

telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument." *Id.* § 552.136(a). Accordingly, NBU must withhold the utility account number we have marked under section 552.136 of the Government Code.

In summary, NBU must withhold the amounts billed to or collected from the customer for utility usage and the personal information, which we have marked, under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code, if the primary source of water for NBU is not a sole-source designated aquifer. If the primary source of water for NBU is a sole-source designated aquifer, NBU has the discretion to release the amounts billed to or collected from the customer for utility usage. NBU must withhold the utility account number 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/tp

Ref: ID# 395575

Enc. Submitted documents

c: Requestor
(w/o enclosures)