



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 5, 2011

Mr. Gary A. Scott
Assistant City Attorney
City of Conroe
P.O. Box 3066
Conroe, Texas 77305

OR2011-00284

Dear Mr. Scott:

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# 404977.

The City of Conroe (the "city") received a request for three categories of information pertaining to the city's water utility system, including the names of all individuals, companies, businesses and governmental entities on the city's water billing rolls who use an average of 75,000 gallons or more a month, their addresses and the total amount of water used for each one in 2008, 2009, and for 2010 up to the date of the request. You state you do not maintain information responsive to categories two and three of the request.¹ You state you have released some of the responsive information to the requestor. You claim that portions of the submitted information are 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

¹In responding to a request for information under the Act, a governmental body is not required to disclose information that did not exist at the time the request was received. *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), 563 at 8 (1990), 555 at 1-2 (1990).

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).² Water service is included in the scope of utility services covered by section 182.052. *Id.* § 182.051(3). "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. Moreover, because section 182.052 is intended to protect 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 Util. Code § 182.051(4), "individual" means only natural persons and does not include artificial entities).

You state the city utility customers whose information you have marked each requested confidentiality for their "personal information," volumes or units of utility usage, and the amounts billed to or collected from their for utility usage prior to the date the city received this request. You also represent none of the exceptions to confidentiality under section 182.054 apply in this instance. *See* Util. Code § 182.054. Finally, you state the primary source of water for the city's utility services is not a sole-source designated aquifer. Therefore, based on your representations and our review, the city must withhold the addresses and amounts billed to or collected for utility usage for these customers, which we have marked, under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code. However, we note some of the customers listed in the

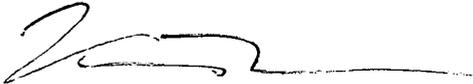
²Section 182.051(3) of the Utilities Code defines a government-operated utility as "a governmental body or an entity governed by a governmental body that, for compensation, provides water, wastewater, sewer, gas, garbage, electricity, or drainage service." Util. Code § 182.051(3).

submitted information are businesses or governmental entities. Accordingly, the addresses of business customers or governmental entities are not protected under section 182.052, and the city may not withhold the addresses of these entities under section 552.101 on that basis. As you raise no further exceptions to disclosure, the remaining requested 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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 404977

Enc. Submitted documents

c: Requestor
(w/o enclosures)