



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 8, 2011

Mr. Joe Torres, III
City Attorney
City of Alice
216 North Texas Boulevard, Suite 2
Alice, Texas 78332

OR2011-01930

Dear Mr. Torres:

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# 408524.

The City of Alice (the "city"), which you represent, received a request for information related to "water connects" and burglary of habitations during two specified months. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

We first address your argument against disclosure of the submitted utility records. 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

¹While you do not explicitly raise section 552.101 of the Government Code in your brief, based on your arguments we understand you to assert section 552.101.

²We 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 that those records contain substantially different types of information than that submitted to this office.

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).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 a post office box number is not an address for the purposes of section 182.052. Water, sewer, garbage collection, and electricity services are 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, the submitted documents reflect some customers whose information you submitted requested confidentiality for their "personal information" prior to the date the city received this request. We have no indication the exceptions to confidentiality in section 182.054 apply in this instance. *See id.* Accordingly, the city must withhold the addresses, telephone numbers, and social security numbers we marked under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code. You do not inform us, however, whether the city's primary source of water is a sole-source designated aquifer. Accordingly, if the city's primary source of water is not a sole-source designated aquifer, the city must also withhold the information revealing the amounts billed to or collected from these individuals we marked under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code. If the city's primary source of water is a sole-source designated aquifer, then the city has discretion to release the customers' billing information, but still must withhold the personal information we marked for these customers. The remaining information contains billing information for individuals you do not state requested confidentiality. If the city's primary source of water is not a sole-source designated aquifer, the city must withhold the billing information for any individuals who requested confidentiality under section 552.101 in conjunction with section 182.052, but must release information pertaining to individuals who did not request confidentiality.

³Section 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).

If the city's primary source of water is a sole-source designated aquifer, the city has discretion to release these individuals' billing information.

We next turn to your arguments against disclosure of the submitted police reports. Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code, which provides in part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). Section 58.007(c) is applicable to records of juvenile delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. Section 51.02(2)(A) defines "child" as a person who is ten years of age or older and under seventeen years of age. *Id.* § 51.02(2)(A). Upon review, two of the submitted reports involve juveniles suspected of delinquent conduct that occurred after September 1, 1997. *See id.* § 51.03(a) (defining "delinquent conduct" for purposes of Fam. Code § 58.007). You do not inform us, and it does not appear, that any of the exceptions in section 58.007 apply to the information in these reports. Therefore, the reports we marked are confidential in their entirety under section 58.007(c) of the Family Code and must be withheld under section 552.101 of the Government Code. However, because the remaining submitted reports do not involve juvenile offenders, we find section 58.007 is not applicable to those reports and they may not be withheld on that basis.

Section 552.101 also encompasses section 261.201 of the Family Code, which provides in relevant part:

(a) [T]he following information is confidential, is not subject to public release under [the Act], and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Id. § 261.201(a). You generally claim the remaining information is confidential pursuant to section 261.201. However, the remaining information pertains to investigations of burglaries of habitations. You have not submitted any arguments explaining how this information was used or developed in an investigation conducted under chapter 261. Consequently, you failed to demonstrate how the information at issue is a report of child abuse or neglect, or was used or developed in an investigation under chapter 261. *See id.* § 261.001 (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). We therefore conclude section 261.201 is not applicable to the remaining information, and it may not be withheld on that basis.

Next, you claim the remaining submitted police reports are excepted under section 552.108 of the Government Code, which excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why release of the requested information would interfere with law enforcement. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. Open Records Decision No. 409 at 2 (1984). In this instance, although you cite to a statement of the city’s police chief as evidence of the applicability of section 552.108(a)(1), you have not submitted that statement for our review. However, you state the remaining information “involves an open and continuing criminal investigation.” The remaining twenty-nine reports, however, pertain to separate burglaries. You do not explain how these twenty-nine reports relate to the pending investigation, or how release of information pertaining to various incidents would interfere with the investigation of one particular case. Accordingly, the city has failed to establish that release of the remaining information would interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.301(e)(1)(A). Therefore, the city may not withhold any information under section 552.108.

Section 552.101 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. This office has found that some kinds of medical information or

information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we have marked the part of the remaining information that reveals a highly intimate and embarrassing personal detail of no legitimate public interest. The city must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy.

The remaining information contains Texas motor vehicle record information that is subject to section 552.130 of the Government Code.⁴ Section 552.130 excepts from disclosure information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency. Gov't Code § 552.130(a)(1), (2). The city must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.⁵

We note the remaining information includes utility account numbers. Section 552.136 of the Government Code states that "[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). 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). Upon review, we find the submitted utility account numbers constitute access device numbers for purposes of section 552.136. Thus, the city must withhold the account numbers we have marked under section 552.136.

In summary, the city must withhold the addresses, telephone numbers, and social security numbers we marked pertaining to utility customers who requested confidentiality for such information under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code. If the city's primary source of water is not a sole-source designated aquifer, the city must also withhold the billing information we marked for these individuals, as well as the billing information for any other individuals who requested confidentiality for their information, under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code. If the city's primary source of water is a sole-source designated aquifer, the city has discretion to release the marked billing information. The city must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 58.007 of the Family

⁴The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

⁵Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers and Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

Code. The city must also withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information we marked under section 552.130 of the Government Code. The remaining submitted information must be released.⁶

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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/em

Ref: ID# 408524

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁶The remaining information contains social security numbers that are not confidential pursuant to section 182.052 of the Utilities Code. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).