



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 20, 2011

Mr. Tyler F. Wallach
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2011-05514

Dear Mr. Wallach:

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# 417923 (ORR #W007051).

The City of Fort Worth (the "city") received a request for information related to a specified address. You state the city is releasing some of the requested information, but claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Initially, we note that, although you assert the requestor asked for "Animal Control Records" related to the specified address, the request for information was specifically for "anything and everything related to" the address. You do not inform us the requestor clarified or narrowed her request for only animal control records. Accordingly, we assume that, to the extent any additional responsive information other than animal control records existed and was maintained by the city when it received the request for information, the city has released it

¹You state that the city has redacted Texas motor vehicle record information pursuant to the previous determinations issued to the city in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007) and social security numbers pursuant to section 552.147 of the Government Code. See Gov't Code §§ 552.147 (b), 552.301(a); Open Records Decision No. 673 at 7-8 (2001).

to the requestor. If not, then the city must do so immediately. *See* Gov't Code §§ 552.006, 552.301, 552.302; Open Records Decision No. 664 (2000).

You next acknowledge, and we agree, you failed to comply with the procedural requirements of section 552.301 of the Government Code. 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* Gov't Code § 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). The presumption that information is public under section 552.302 can generally be overcome by demonstrating the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Sections 552.101 and 552.136 of the Government Code can provide compelling reasons to overcome this presumption; therefore, we will consider whether these sections require the city to withhold the information at issue.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision. 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). "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 service is included in the scope of utility services covered by section 182.052. *Id.* § 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.

There is no indication any of the exceptions listed in section 182.054 is applicable to the submitted information. We understand the primary source of water for the city's utility services is not a sole-source designated aquifer. You state the individual whose information is at issue requested confidentiality of the personal information before the city received the request for information. Based on this representation, we agree the city must withhold the personal information you have marked under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code. *See* ORD 625 at 7 (character of requested information as public or not public must be determined at time request for information is made).

Section 552.136 of the Government Code provides as follows:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device 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.

(b) Notwithstanding 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.

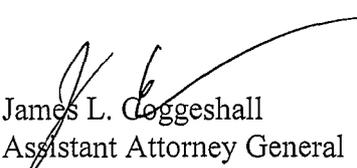
Gov't Code § 552.136(a), (b). You seek to withhold the customer identification numbers and location identification numbers you have marked in the submitted billing records under section 552.136. You inform us the marked customer and location identification numbers are a customer's utility account number, which we understand is used to obtain utility services. Based on your representations and our review, we find the city must withhold the customer and location identification numbers you have marked under section 552.136 of the Government Code.

To conclude, the city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code and under section 552.136 of the Government Code. The city must release the remaining information.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tf

Ref: ID# 417923

Enc. Submitted documents

c: Requestor
(w/o enclosures)