



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 28, 2011

Ms. Jessica C. Eales
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2011-05828

Dear Ms. Eales:

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# 415540 (GC Nos. 18252 and 18253).

The City of Houston (the "city") received two requests from the same requestor for twenty categories of information, including records relating to city water customers, the city's Public Works and Engineering Department (the "PWED"), and employees of the PWED. You indicate the city has no information that would be responsive to parts of these requests.¹ You state some of the requested information was released to the requestor in response to previous requests. *See* Gov't Code § 552.232 (prescribing procedures for response to repetitious or redundant request for information). You also state the city will release some of the requested information. You contend some of the submitted information is not subject to the Act. You also claim some of the submitted information is excepted from disclosure under

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).

sections 552.101 and 552.103 of the Government Code. We have considered your arguments and reviewed the information you submitted.²

We initially note you have marked some of the submitted information as not being responsive to the present requests. This decision does not address the public availability of information that is not responsive to these requests, and the city need not release such information in response to the requests.

You also contend some of the submitted responsive information is not subject to the Act. The Act is applicable to information "collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body." Gov't Code § 552.002(a)(1). However, the Act's definition of "governmental body" "does not include the judiciary." *Id.* § 552.003(1)(B). Information "collected, assembled, or maintained by or for the judiciary" is not subject to the Act but instead is "governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules." *Id.* § 552.0035(a); *cf.* Open Records Decision No. 131 (1976) (applying statutory predecessor to judiciary exclusion under Gov't Code § 552.003(1)(B) prior to enactment of Gov't Code § 552.0035). You state some of the responsive information, which you have marked, is maintained by the city's municipal court. Based on your representation and our review of the information at issue, we conclude the marked information is not subject to the Act and need not be released in response to these requests for information.³

We next note the rest of the submitted responsive information falls within the scope of section 552.022(a) of the Government Code, which provides that the following information is subject to required public disclosure and must be released unless the information is expressly made confidential under other law:

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body; [and]

²This letter ruling assumes the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the city to withhold any information that is substantially different from the submitted information. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

³As we are able to make this determination, we need not address your other claim for the information maintained by the court. We note records of the judiciary may be public under other sources of law. *See* Gov't Code § 29.007(d)(4) (complaints filed with municipal court clerk); *id.* § 29.007(f) (municipal court clerks shall perform duties prescribed by law for county court clerk); Local Gov't Code § 191.006 (records belonging to office of county clerk shall be open to public unless access restricted by law or court order); *see also Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (documents filed with courts are generally considered public and must be released); Attorney General Opinions DM-166 at 2-3 (1992) (public has general right to inspect and copy judicial records), H-826 (1976); Open Records Decision No. 25 (1974).

(8) a statement of the general course and method by which an agency's functions are channeled and determined, including the nature and requirements of all formal and informal policies and procedures.

Gov't Code § 552.022(a)(3), (8). Thus, the remaining responsive information, which consists of information in city utility account records and PWED organization charts, is subject to section 552.022(a)(3) and (8). Although you seek to withhold the information encompassed by section 552.022(a) under section 552.103 of the Government Code, that section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d at 475-76; Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.103 is not other law that makes information confidential for purposes of section 552.022(a)(3) or (8). Therefore, the city may not withhold any of the responsive information in the utility account records or the organization charts under section 552.103 of the Government Code. We will address the city's claim that some of the responsive utility account information is confidential under section 552.101 of the Government Code.

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 exception encompasses information other statutes make confidential. Section 182.052 of the Utilities Code provides in 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.

Util. Code § 182.052(a). "Personal information" under section 182.052(a) means an individual's address, telephone number, or social security number. *See id.* § 182.051(4). The names of utility customers are not included in the definition of personal information and thus are not confidential under section 182.052 of the Utilities Code. Water service is included in the scope of utility services encompassed by section 182.052. *See id.* § 182.051(3). Section 182.054 of the Utilities Code provides six exceptions to section 182.052(a)'s prohibition of public disclosure. *See id.* § 182.054.

You state the PWED is a government-operated utility. You also state the city's primary source of water is not a sole-source designated aquifer. You inform us the responsive utility

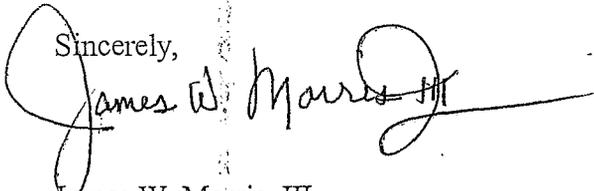
account information pertains to a customer who requested confidentiality for personal information in his utility account records prior to the city's receipt of the request for the information. You contend the customer's address is confidential under section 182.052. You do not indicate any of the exceptions to confidentiality under section 182.054 is applicable in this instance. Based on your representations and our review of the information at issue, we agree the city must withhold the customer's address under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code.

In summary: (1) the marked information maintained by the city's municipal court is not subject to the Act and need not be released in response to these requests for information; and (2) the city must withhold the utility customer's address under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code. The city must release the rest of the responsive 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 W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 415540

Enc: Submitted documents

c: Requestor
(w/o enclosures)