



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 12, 2011

Mr. Dan T. Saluri
Senior Assistant City Attorney
City of San Angelo
P.O. Box 1751
San Angelo, Texas 76902-1751

OR2011-09827

Dear Mr. Saluri:

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# 423519.

The City of San Angelo (the "city") received a request for the city water utility's five biggest residential and five biggest commercial customers by water consumption during the last five years. We understand you to claim the requested information is not subject to the Act. Alternatively, you claim the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of information¹.

Initially, you state the requested information is not available in the format sought by the requestor, and the request requires creation of a new document. You argue that, if the request requires the city to obtain or create information, such information is not subject to the Act. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). Additionally, the Act does not require a governmental body to release information that did not exist when it received a request. *See Economic 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, 452 at 3

¹We 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 those records contain substantially different types of information than that submitted to this office.

(1986), 362 at 2 (1983). However, you state only that the city did not maintain a record in the format sought by the requestor, not that the data responsive to the request did not exist on the date of the request. On the contrary, you state the city is in possession of the necessary data and has the capacity to respond to the request.

A request for public information that requires a governmental body to program or manipulate existing data is not considered to be a request for the creation of new information. *See* Gov't Code § 552.231; *Fish v. Dallas Indep. Sch. Dist.*, 31 S.W.3d 678, 681-82 (Tex. App.—Eastland 2000, pet. denied) (plaintiffs' request required manipulation of existing data rather than creation of new information); Open Records Decision No. 661 at 6-7 (1999). Thus, if information that is otherwise available to a governmental body can be programmed or manipulated for the purpose of responding to a request for information, then the governmental body has access to information responsive to that. Accordingly, while the city is not required to create a document in response to the request, documents from which the requested information may be derived would be responsive to this request. A government body must make a good faith effort to relate a request to information which it holds. *See* Open Records Decision No. 561 at 8 (1990).

Section 552.231 prescribes procedures that must be followed if, in responding to a request for information, a governmental body would be required to program or manipulate data. *See* Gov't Code § 552.231(a) (written statement described by section 552.231(b) shall be provided to requestor if governmental body determines (1) responding to request for information will require programming or manipulation of data and (2) compliance with request is not feasible or will result in substantial interference with ongoing operations or that information could be made available in requested form only at costs that cover programming and manipulation). A governmental body that fails to follow the requirements of section 552.231 is not released by that section from its obligation to provide the requested information or to seek a ruling from this office as to whether the information is excepted from disclosure. *See Fish*, 31 S.W.3d at 682. Thus, the city's officer for public information carries the duty of promptly producing such public information when it is requested, unless the city wishes to withhold the information. Gov't Code §§ 552.203, .221. As you timely submitted a request for a ruling as to whether the requested information is excepted from disclosure, we will address your argument.

We first note portions of the submitted information are not responsive to the instant request, which seeks only the identities of the city water utility's five biggest residential and five biggest commercial customers. Thus, any information contained in the submitted information beyond identity is not responsive to the request. This ruling does not address the public availability of non-responsive information, and the city is not required to release non-responsive information in response to this request.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.*

§ 552.101. This section encompasses information protected by other statutes, such as section 182.052 of the Utilities Code, which 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). Thus, as the city acknowledges, it must release the names of the five biggest residential and commercial consumers of water.

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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/dls

Ref: ID # 423519

Enc. Submitted documents

c: Requestor
(w/o enclosures)