



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 26, 2011

Mr. Warren M. S. Ernst  
Chief of the General Counsel Division  
Office of the City Attorney  
City of Dallas  
1500 Marilla Street, Room 7BN  
Dallas, Texas 75201

OR2011-10714

Dear Mr. Ernst:

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# 425376.

The City of Dallas (the "city") received a request for documents submitted to the city's water department requesting disconnection of water service at a specified address. You claim the submitted information is 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 Code § 552.101. This section encompasses information made confidential by other statutes. You claim the submitted information is excepted from disclosure under section 552.101 because the public release of the information would not be consistent with preventing identity theft in accordance with the mandate in part 681 of title 16 of the Code of Federal Regulations (the "Red Flags Rules"). *See* 16 C.F.R. pt. 681; *see also* 15 U.S.C. § 1681m(e)(1)(A), (B) (requiring federal banking agencies, National Credit Union Administration, and Federal Trade Commission (the "commission") to establish guidelines regarding identity theft with respect to account holders and to prescribe regulations requiring financial institutions and creditors to establish reasonable policies and procedures for implementing those guidelines). Section 681.1 requires financial institutions and creditors

that are subject to the commission's enforcement of the Fair Credit Reporting Act and that offer or maintain "covered accounts" to develop and implement a written identity theft prevention program.<sup>1</sup> 16 C.F.R. § 681.1(a), (d)(1). The purpose of such a program is to "detect, prevent, and mitigate identity theft in connection with the opening of a covered account or any existing covered account." *See id.* pt. 681, App. A (providing guidelines for financial institutions and creditors to formulate and maintain programs satisfying requirements of section 681.1). For purposes of the Red Flags Rules, a "creditor" has the same meaning as in section 1681a(r)(5) of title 15 of the United States Code and includes a utility company. *Id.* § 681.1(b)(5); *see also* 15 U.S.C. §§ 1681a(r)(5) ("creditor" has same meanings as in 15 U.S.C. § 1691a, 1691a(e) (defining "creditor" as any person who regularly extends, renews, or continues credit). A "covered account" means an account that "a financial institution or creditor offers or maintains, primarily for personal, family, or household purposes, that involves or is designed to permit multiple payments or transactions, such as a credit card account, mortgage loan, automobile loan, margin account, cell phone account, utility account, checking account, or savings account[.]" 16 C.F.R. § 681.1(b)(3)(i).

You state in accordance with the commission's rules, the city has developed and implemented an identity theft prevention program (the "program"). This program, a copy of which you have provided to this office, states, "Since identity theft involves theft of information, this policy focuses on the acquisition, screening, and protection of information held by or submitted to the [c]ity by the customer of a covered account." However, you have not directed our attention to any provision in the program or the Red Flags Rules that makes the submitted information confidential. *See* Gov't Code § 552.101 (excepting information made confidential by law). Furthermore, you have not explained how section 681.1 provides the city with the authority to make any information confidential by resolution. A governmental body may not promulgate a rule that designates information as being confidential, so as to bring the information within the scope of section 552.101 of the Government Code, unless the governmental body has been given specific statutory authority to do so. *See* Open Records Decision Nos. 594 at 2-3 (1991) (city ordinance cannot operate to make information confidential when not excepted by Act), 263 (1981) at 2-3; *see also* *City of Brookside Village v. Comeau*, 633 S.W.2d 790, 796 (Tex. 1982) (local ordinance conflicting with or inconsistent with state legislation not permissible); *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976) (agency rule may not make information confidential in circumvention of Act). After considering your arguments and reviewing the city's program and the information at issue, we conclude you have not demonstrated how the Red Flags Rules or the program makes confidential any portion of the submitted information. *See* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express, and confidentiality requirement will not be implied from statutory structure), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to

---

<sup>1</sup>Although you cite to section 681.2 of title 16 of the Code of Federal Regulations, we note section 681.1 is the correct section for the substance of your argument.

public). Therefore, we conclude the city may not withhold any information under section 552.101 of the Government Code in conjunction with either the Red Flags Rules or the city's identity theft prevention program.

Section 552.101 also encompasses 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) includes 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.

In this instance, we understand none of the exceptions listed in section 182.054 is applicable. You do not inform us whether the individual whose information is at issue timely requested confidentiality under section 182.052. Accordingly, if the customer at issue made a written request for confidentiality prior to the city's receipt of this request for information, the city must withhold the information we 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). If the individual whose information is at issue did not make a written confidentiality request prior to the city's receipt of this request, the city may not withhold the marked information under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the

public. *Indus. Found.*, 540 S.W.2d at 685. To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *See id.* at 681-82. The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. You argue the remaining information is exempt from disclosure under the common-law right of privacy. Upon review, we find you have not demonstrated how any of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Thus, no portion of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

The submitted documents also include information that may be subject to section 552.136 of the Government Code.<sup>2</sup> Section 552.136 provides, “[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). Section 552.136(a) defines “access device” as “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 . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* § 552.136(a). Accordingly, to the extent the information we have marked consists of utility account numbers or other means of account access that may be used to obtain services, the city must withhold the numbers we have marked under section 552.136 of the Government Code. To the extent the information we marked under section 552.136 does not consist of utility account numbers or other means of account access that may be used to obtain services, the city may not withhold the marked numbers under section 552.136 of the Government Code.

In summary, if the customer at issue made a written request for confidentiality prior to the city’s receipt of this request for information, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code. To the extent the information we have marked under section 552.136 consists of utility account numbers or other means of account access that may be used to

---

<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

obtain services, the city must withhold the numbers we have marked under section 552.136 of the Government Code. The remaining information must be released.<sup>3</sup>

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](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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/agn

Ref: ID# 425376

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

---

<sup>3</sup>We note some of the information being released in this instance may be confidential with respect to the general public. *See* Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Therefore, if the city receives another request for this information from a different requestor, the city must again seek a ruling from this office.

Ref: ID# 425376

Enc. Submitted documents

c: Requestor  
(w/o enclosures)