



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 20, 2012

Ms. Rebecca Brewer  
Abernathy, Roeder, Boyd & Joplin, P.C.  
P.O. Box 1210  
McKinney, Texas 75070-1210

OR2012-00935

Dear Ms. Brewer:

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# 443695.

The City of Frisco (the “city”), which you represent, received a request for the water usage records for the last thirty-six months on a house owned by a wife and husband who requested the information (collectively, the “requestor”). You claim the requested information is exempted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted information contains confidentiality election forms and copies of driver’s licenses. These documents are not responsive to the request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the city is not required to release these documents to requestor in response to this request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dismissed).

Section 552.101 of the Government Code exempts 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.

(c) A government-operated utility shall include with a bill sent to each customer:

...

(3) a form by which the customer may request confidentiality by marking an appropriate box on the form and returning it to the government-operated utility.

Util. Code § 182.052(a), (b), (c)(3). "Personal information" under section 182.052(a) means an individual's address, telephone number, and 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 182.052(b) provides the means by which a customer may request confidentiality for his or her personal information, certain utility usage information, and information relating to the amounts billed to or collected from the customer for utility usage. *See id.* § 182.052(a), (b). As noted above, you have submitted the confidentiality election forms of the customers whose information is at issue. These election forms permit individuals to request confidentiality for their "personal information," but do not provide a means for the individuals to request confidentiality for their consumption and billing information.

The submitted information includes the requestor's personal information. Section 182.052(d) of the Utilities Code states that "[a] customer may rescind a request for confidentiality by providing the government-operated utility written permission to disclose personal information." Util. Code § 182.052(d). It is implicit from the language of this section that the city is not prohibited from releasing the customer's own personal information if the customer provides permission to do so. *See id.*; *see also id.* § 182.054(5) (personal

information may be released to person for whom the customer has contractually waived confidentiality for personal information). As the requestor's written request encompasses the requestor's personal information, we conclude the requestor has provided written permission for the city to disclose the requestor's personal information in this situation. Thus, because the city has permission to do so, it must release the requestor's personal information. However, the city must withhold the personal information of another customer, which we have marked, under section 552.101 in conjunction with section 182.052. In addition, you have not established the customers at issue requested confidentiality for their consumption and billing information before the city received the request for information. *See* Open Records Decision No. 478 at 2 (1987) (language of confidentiality statute controls scope of protection). Accordingly, the city may not withhold any of the submitted consumption and billing information under section 552.101 of the Government Code in conjunction with section 182.052(a) of the Utilities Code.

The submitted information contains account numbers that are subject to section 552.136 of the Government Code.<sup>1</sup> Section 552.136 provides the following:

(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. The requestor has a right of access to the requestor's account number pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) ("[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy

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<sup>1</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987); *see, e.g.*, Open Records Decision No. 470 at 2 (1987) (because release of confidential information could impair rights of third parties and because improper release constitutes a misdemeanor, attorney general will raise predecessor statute of section 552.101 on behalf of governmental bodies).

interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). However, the city must withhold the account numbers of other customers, which we have marked, under section 552.136.

To conclude, 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 and under section 552.136 of the Government Code. The city must release the remaining information.<sup>2</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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/ag

Ref: ID# 443695

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>Because the requestor has a special right of access to some of the information being released, the city must again seek a decision from this office if it receives another request for the same information from another requestor.