



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 24, 2012

Ms. Stefani Knapp
City Secretary
City of Gunter
P.O. Box 349
Gunter, Texas 75058-0349

OR2012-05827

Dear Ms. Knapp:

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# 451418.

The City of Gunter (the "city") received a request for all new resident mailing addresses for a specified time period. You claim the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Initially, we note some of the submitted information, which we have marked, is not responsive because it consists of the names of residents. The request only asks for mailing addresses. This ruling does not address the public availability of nonresponsive information, and the city is not required to release nonresponsive information in response to this request.²

Next, we must address the city's obligations under the Act. Section 552.301(e) of the Government Code requires the governmental body to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why

¹We assume the "representative sample" of information 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 those submitted to this office.

²As we are able to make this determination, we need not address your argument against disclosure of the nonresponsive information.

the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e). The submitted request indicates the city received the request on February 1, 2012. However, the general written comments stating the reasons why the stated exceptions apply and the responsive information was mailed in an envelope postmarked on April 11, 2012. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, the city failed to comply with the procedural requirements mandated by section 552.301(e).

Pursuant to section 552.302 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 information is public and must be released, unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 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) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Because your claim under section 552.101 of the Government Code can provide a compelling reason to withhold information, we will consider this exception's applicability to the responsive 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 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). Water service is included in the scope of utility services covered by section 182.052. *Id.* § 182.051(3). “Personal information” under section 182.052(a) includes an individual’s address. *See id.* § 182.051(4); *see also* Open Records Decision No. 625 (1994) (construing statutory predecessor). We note a post office box number is not an address for the purposes of section 182.052. A customer’s request for confidentiality must precede the utility’s receipt of the request for information. ORD 625 at 6.

You generally assert the responsive information at issue is subject to section 182.052. However, it is not clear whether the individual customers at issue timely requested confidentiality under section 182.052. As such, we rule conditionally. To the extent the individual customers at issue made written requests for confidentiality prior to the city’s receipt of this request for information, the city must withhold the addresses we have marked under section 552.101 in conjunction with section 182.052 of the Utility Code. To the extent that the individual customers at issue did not make written confidentiality requests prior to the city’s receipt of this request, the city must release the addresses we have marked. *See* ORD 625 at 7. Regardless, the remaining responsive information at issue, which consists of post office box addresses, does not constitute personal information for purposes of section 182.052 of the Utilities Code. This information is not confidential under section 182.052, and may not be withheld under section 552.101 of the Government Code on that basis. The city must release the remaining responsive information at issue.

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/akg

Ref: ID# 451418

Enc. Submitted documents

c: Requestor
(w/o enclosures)