



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 1, 2012

Ms. Cara Leahy White  
Counsel for the City of Southlake  
Taylor, Olson, Adkins, Sralla, Elam, L.L.P.  
6000 Western Place, Suite 200  
Fort Worth, Texas 76107

OR2012-15611

Dear Ms. White:

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# 466482.

The City of Southlake (the "city"), which you represent, received a request for the addresses and gallons of water used by the top one-hundred users in the city during a specified period of time. You claim that 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.

First, we must address the city's obligations under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires that a governmental body ask for a decision from this office and state which exceptions apply to the requested information by the tenth business day after receiving the request. Gov't Code § 552.301(b). You state the city received the request for information on July 9, 2012. Accordingly, the city's ten-business-day deadline was July 23, 2012. However, the envelope in which you submitted your request for decision bears a postmark date of July 24, 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). Accordingly, we conclude the city failed to comply with the requirements of section 552.301.

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

the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Forth Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-81 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). The presumption that information is public under section 552.302 can generally be overcome by demonstrating the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). You raise section 552.101 of the Government Code. Because this exception can provide a compelling reason to withhold information, we will address the applicability of section 552.101 to the submitted information.

Next, we note a portion of the information you have submitted is not responsive to the instant request, which seeks only account addresses and gallons of usage for the top one hundred water users in the city during a specified period of time. This ruling does not address the public availability of the non-responsive information, which we have marked, nor is the city 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.” 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 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) is defined as “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. Util. Code § 182.051(3). However, because section 182.052 is intended to protect the safety and privacy of individual customers, this statute is applicable only to information pertaining to natural persons, and does not protect information relating to business, governmental, and other artificial entities. *See* ORD 625

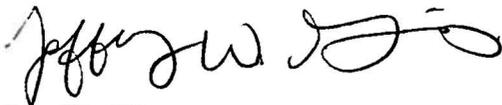
at 4-5 (in context of section 182.051(4) of the Utility Code, "individual" means only natural persons and does not include artificial entities).

You state the primary source of water for the city's utility services is not a sole-source designated aquifer. There is no indication any of the exceptions listed in section 182.054 is applicable to the responsive information. You seek to withhold the responsive personal and water usage information of the residential customers you have highlighted. Thus, the city must withhold the information you have highlighted under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code if the customers at issue made a written request for confidentiality of these types of information prior to the city's receipt of the request for information. However, if these customers did not make a written request for confidentiality of these types of information prior to the city's receipt of the request for information, the city may not withhold this information. Regardless, the remaining responsive information must be released.

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,



Jeffrey W. Giles  
Assistant Attorney General  
Open Records Division

JWG/tch

Ref: ID# 466482

Enc. Submitted documents

c: Requestor  
(w/o enclosures)