



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 29, 2012

Mr. Andrew Quittner
Assistant City Attorney
Office of the City Attorney
City of Seguin
P.O. Box 591
Seguin, Texas 78156

OR2012-17232

Dear Mr. Quittner:

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# 469179.

The City of Seguin (the "city") received two requests from the same requestor for utility records for a specified address, including records of "utility consumption," and records of a specified city council meeting.¹ You state the city has released responsive records of regular and special city council meetings and a related employment contract. You inform us the audio recordings of the meetings no longer exist.² You claim other requested information is excepted from disclosure under sections 552.101, 552.102(a), and 552.107(1) of the

¹We note the requestor subsequently informed the city he seeks access to records of "utility consumption." See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

²We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. See *Econ. 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 (1990), 452 at 3 (1986), 362 at 2 (1983).

Government Code.³ We have considered the exceptions you claim and reviewed the information you submitted.

We first note you have submitted, as Exhibit 4, the minutes of a regular meeting of the city council. You indicate, however, Exhibit 4 was submitted for purposes of explanation and not as information the city seeks to withhold. Therefore, this decision does not address the public availability of Exhibit 4.

We also note the city failed to fully comply with section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes procedures a governmental body must follow in asking this office to determine whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301(a). Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of its receipt of the request, (1) written comments stating why the governmental body's claimed exceptions apply to the information at issue; (2) a copy of the request for information; (3) a signed statement of the date of the governmental body's receipt of the request or evidence sufficient to establish the date; and (4) the specific information at issue or representative samples if the information is voluminous. *See id.* § 552.301(e)(1)(A)-(D). Section 552.302 of the Government Code provides that if a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *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).

You inform us the city received requests for information from the requestor on August 9, 2012 and August 14, 2012. Although you provided a copy of the August 14 request, you did not provide a copy of the August 9 request. Additionally, you have not submitted any information, or a representative sample of any information, responsive to the request for records of utility consumption at the specified address. Thus, the city did not fully comply with section 552.301, and the requested information is therefore presumed to be public under section 552.302. This statutory presumption can generally be overcome when 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). We understand you to claim the requested records of utility consumption are confidential under section 552.101 of the Government Code, which can provide a compelling reason for non-disclosure. But because you did not submit any records of utility consumption or a representative sample of any such records, we have no basis to conclude any information responsive to that aspect of the present requests is confidential under section 552.101. Thus, we have no choice but to order you to release any responsive records of utility consumption the city maintained on the date

³Although you cite to "Section 551.101" of the Government Code, we understand you to claim section 552.101.

of its receipt of the present requests. If you believe any such information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

Next, we address your other claims under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," Gov't Code § 552.101, and encompasses information made confidential by other statutes. Section 551.104 of the Open Meetings Act, chapter 551 of the Government Code, provides in part that "[t]he certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3)." *Id.* § 551.104(c). Thus, such information cannot be released to a member of the public in response to an open records request. *See* Attorney General Opinion JM-995 at 5-6 (1988) (public disclosure of certified agenda of closed meeting may be accomplished only under procedures provided in Open Meetings Act). Section 551.146 of the Open Meetings Act makes it a criminal offense to disclose a certified agenda or tape recording of a lawfully closed meeting to a member of the public. *See* Gov't Code § 551.146(a)-(b); *see also* Open Records Decision No. 495 at 4 (1988) (attorney general lacks authority to review certified agendas or tapes of executive sessions to determine whether governmental body may withhold such information under statutory predecessor to Gov't Code § 552.101). You state the requestor seeks access to records of an executive session of the city council. Based on your representations and our review, we conclude the city must withhold the requested records of the executive session under section 552.101 of the Government Code in conjunction with section 551.104 of the Government Code.⁴

Section 552.101 of the Government Code also encompasses section 182.052 of the Utilities Code, which provides in part:

(a) Except as provided by Section 182.054 [of the Utilities Code], 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

⁴As we are able to make this determination, we need not consider your claims for records of the executive session under sections 552.102 and 552.107(1) of the Government Code. We note Open Records Decision No. 684 (2009) is a previous determination issued by this office authorizing all governmental bodies to withhold specified categories of information without the necessity of requesting an attorney general decision, including a certified agenda and tape of a closed meeting under section 552.101 of the Government Code in conjunction with section 551.104 of the Government Code.

if the primary source of water for such utility was a sole-source designated aquifer.

Util. Code § 182.052(a). "Personal information," for purposes of section 182.052(a), means an individual's address, telephone number, or social security number. *See id.* § 182.051(4). A utility customer's name is not included in the definition of personal information and thus is not confidential under section 182.052. Water service is included in the scope of utility services encompassed by section 182.052. *See id.* § 182.051(3). Section 182.054 of the Utilities Code provides six exceptions to section 182.052(a)'s prohibition of public disclosure. *See id.* § 182.054.

You have submitted, as a responsive utility record, a print-out from the city's utility billing office marked as Exhibit 2. You indicate the utility customer concerned requested confidentiality for the customer's personal information prior to the city's receipt of the request. Based on your representations and our review, we conclude the city must withhold the customer's address and telephone number in Exhibit 2, which we have marked, under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code. Although you generally claim Exhibit 2 is confidential under section 182.052, we conclude the city may not withhold any of the remaining information on that basis under section 552.101. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection).

We note Exhibit 2 also contains information protected by sections 552.130 and 552.136 of the Government Code.⁵ Section 552.130 excepts from disclosure information related to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country. *See* Gov't Code § 552.130(a)(1). The city must withhold the driver's license number we have marked in Exhibit 2 under section 552.130 of the Government Code.

Section 552.136 of the Government Code states that "[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); *see id.* § 552.136(a) (defining "access device"). The city must withhold the customer identification number we have marked in Exhibit 2 under section 552.136 of the Government Code.

In summary, the city must withhold (1) the requested records of the executive session of the city council under section 552.101 of the Government Code in conjunction with section 551.104 of the Government Code; (2) the marked address and telephone number in

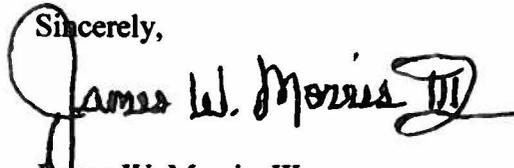
⁵This office will raise sections 552.130 and 552.136 on behalf of a governmental body, as these sections are mandatory exceptions to disclosure. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

Exhibit 2 under section 552.101 in conjunction with section 182.052 of the Utilities Code; (3) the marked driver's license number in Exhibit 2 under section 552.130 of the Government Code; and (4) the marked customer identification number in Exhibit 2 under section 552.136 of the Government Code. The city must release the rest of the requested information, including any responsive records of utility consumption.

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,

A handwritten signature in black ink that reads "James W. Morris III". The signature is written in a cursive style with a large, looped initial "J".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/bhf

Ref: ID# 469179

Enc: Submitted documents

c: Requestor
(w/o enclosures)