



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 31, 2012

Mr. Joe Gorfida, Jr.
Counsel for the City of Allen
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
500 North Akard Street
Dallas, Texas 75201

OR2012-17395

Dear Mr. Gorfida:

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# 469592.

The City of Allen (the "city"), which you represent, received a request for any information pertaining to a specified address, including utility records and building permit history. You state the city has released some of the requested information to the requestor. 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, 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, 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). Section 182.054 of the Utilities Code provides six exceptions to the disclosure prohibition found in section 182.052. Util. Code § 182.054. We understand none of the exceptions listed in section 182.054 are applicable to the information at issue.

You state the submitted information contains personal information that is confidential under section 182.052 of the Utilities Code. You have submitted the confidentiality election form of one of the individuals whose information is at issue. We note the election form permits the individual to request confidentiality for his "personal information," but does not provide a means for the individual to request confidentiality for his water usage information. Therefore, upon review, we find the city must withhold this individual's personal information, which we have marked, under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code. However, this individual's remaining information does not constitute personal information for purposes of section 182.052 of the Utilities Code. Therefore, the remaining information at issue is not confidential under section 182.052 and may not be withheld under section 552.101 on that basis.

We note a portion of the remaining information pertains to a second individual. You have not provided a confidentiality election form for this individual. Thus, we are unable to determine if the second individual whose information is at issue timely requested confidentiality. Further, we are unable to determine whether the city's primary source of water is a sole-source designated aquifer. Accordingly, we must rule conditionally. If the primary source of water for the city is not a sole-source designated aquifer, then the city must withhold the water usage information we have marked if the individual timely made a written request for confidentiality for that information under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code. Conversely, if the primary source of water for the city is a sole-source aquifer and the individual timely elected confidentiality for his water usage information, then the city has the discretion to release water usage information, notwithstanding the individual's request for confidentiality. In either circumstance, to the extent the individual timely elected confidentiality for his personal information under section 182.052, the city must withhold the individual's personal information, which we have marked, under section 552.101 in conjunction with section 182.052. However, if the individual did not timely elect confidentiality for his

personal or water usage information, then the city may not withhold that information under section 552.101 in conjunction with section 182.052. *See* ORD 625 at 7 (character of requested information as public or not public must be determined at time request for information is made).

In summary, for the individual whose election form you provided, the city must withhold his personal information, which we have marked, under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code. For the second individual whose information is at issue, if the primary source of water for the city is not a sole source designated aquifer, then the city must withhold the water usage information we have marked if the individual timely made a written request for confidentiality for that information under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code. Conversely, if the primary source of water for the city is a sole-source aquifer and the individual timely elected confidentiality for his water usage information, then the city has the discretion to release water usage information, notwithstanding the individual's request for confidentiality. Finally, in either circumstance, to the extent the individual timely elected confidentiality for his personal information under section 182.052, the city must withhold the individual's personal information, which we have marked, under section 552.101 in conjunction with section 182.052. However, in either case, if the individual did not timely elect confidentiality for his personal or water usage information, then the city may not withhold that information under section 552.101 in conjunction with section 182.052. The remaining 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, 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, appearing to read "Michelle R. Garza", with a long horizontal flourish extending to the right.

Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/som

Ref: ID# 469592

Enc. Submitted documents

c: Requestor
(w/o enclosures)