



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 3, 2012

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

OR2012-19363

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# 472582.

The City of Azle (the "city"), which you represent, received a request for water account holder information pertaining to a specified address from January 2002 to August 2012, specifically, name and contact information, including forwarding address, telephone and mobile number, and any information regarding a home inspection on rental property. You state you will release to the requestor information regarding her own account. You claim the remaining information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions 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 exception encompasses information that 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) means 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 and gas services are included in the scope of utility services covered by section 182.052. *See* Util. Code § 182.051(3). Section 182.054 of the Utilities Code provides six exceptions to the disclosure prohibition found in section 182.052. *See id.* § 182.054.

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). You inform us the city's primary water source is not a sole-source designated aquifer. You state none of the exceptions to confidentiality under section 182.054 apply in this instance. You further state, and provide documentation demonstrating, some of the customers at issue requested confidentiality for certain information regarding their accounts prior to the date of the request for information. However, we note the city's election form permits a customer to request confidentiality only for his or her "personal information" and does not provide a means for a customer to request confidentiality for his or her consumption and billing information. Although you seek to withhold the customers' volume or units of utility usage or the amounts billed to or collected from the individual for utility usage under section 182.052(a) of the Utilities Code, we find, because the customers did not request confidentiality for this information, the city may not withhold it on that basis. *See* Open Records Decision No. 478 at 2 (1987) (language of confidentiality statute controls scope of protection). Based on our review, 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. However, we note, one customer did not elect to make his information confidential. Thus, the city may not withhold this individual's information under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not

of legitimate concern to the public.<sup>1</sup> *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992) (finding personal financial information to include designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). Upon review, we find the information we have marked is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, title, or registration issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a)(1), (2). Upon review, we find the city must withhold the driver's license numbers we have marked under section 552.130 of the Government Code.

Section 552.136(b) 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." Gov't Code § 552.136(b). This office has determined that customer utility account numbers are access device numbers for purposes of section 552.136. *See id.* § 552.136(a) (defining "access device"). Therefore, the city must withhold the customer account numbers we have marked under section 552.136 of the Government Code.

Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). The e-mail address at issue is not excluded by subsection (c). Therefore, the city must withhold the

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<sup>1</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

personal e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.<sup>2</sup>

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with (1) section 182.052 of the Utilities Code, and (2) common-law privacy. The city must also withhold the information we have marked under sections 552.130 and 552.136 of the Government Code. The city must withhold the marked e-mail address under section 552.137 of the Government Code, unless the owner consents to its disclosure. The remaining information must be released.<sup>3</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,



Thana Hussaini  
Assistant Attorney General  
Open Records Division

TH/som

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<sup>2</sup>Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

<sup>3</sup>We note the requestor has a special right of access to some of the information being released in this instance. Gov't Code § 552.023 (person or person's authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests). Because such information may be confidential with respect to the general public, if the city receives another request for this information from a different requestor, the city must again seek a ruling from this office.

**Ref:** ID# 472582

**Enc.** Submitted documents

**c:** Requestor  
(w/o enclosures)