



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 10, 2012

Mr. Stuart V. Neal  
City Attorney  
City of Granbury  
116 West Bridge Street  
Granbury, Texas 76048

OR2012-19827

Dear Mr. Neal:

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# 473172.

The City of Granbury (the "city") received a request for the number of customers of water and electric utilities residing outside the city; the names, addresses, and telephone numbers of those customers; and a map of all water and electric utilities customers. You state the city has released some of the requested information. You explain the city does not maintain any information responsive to the request for the map of all water and electric utilities customers.<sup>1</sup> You claim some of the remaining 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.<sup>2</sup>

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<sup>1</sup>We note the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

<sup>2</sup>We assume the "representative sample" of records 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 that those records contain substantially different types of information than that submitted to this office.

Initially, we note the requestor seeks only the names, addresses, and telephone numbers of water and electric utilities customers residing outside of the city. Thus, the submitted information that does not consist of these names, addresses, and telephone numbers is not responsive to the instant request. The city need not release nonresponsive information in response to this request, and this ruling will not address that information.

Section 552.101 of the Government Code exempts 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 make confidential. You claim section 552.101 in conjunction with 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). We note a post office box number is not an address for the purposes of section 182.052. Moreover, 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). Water and electric utilities 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.

You state the information you have indicated pertains to water and electric utilities customers who timely requested confidentiality under section 182.052 for their personal information. You also state none of the exceptions to confidentiality under section 182.054 apply in this instance. We note portions of the information you have indicated consist of post office box

numbers and information relating to businesses. This information may not be withheld under section 552.101 on the basis of section 182.052. However, based on your representations and our review, the city must generally withhold the remaining addresses and telephone numbers of the water and electric utilities customers you have indicated under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code.

You contend portions of the remaining information are confidential under section 552.101 of the Government Code in conjunction with section 33.102 of the Utilities Code. Section 33.102 of the Utilities Code provides, in relevant part:

(a) A municipality that owns a utility shall:

...

(2) provide to any person, on request, a list of the names and addresses of the ratepayers who reside outside the municipality.

*Id.* § 33.102(a)(2). We note section 33.102 is contained within subtitle B of title 2 of the Utilities Code, which is entitled "Electric Utilities." *See id.* § 31.001 *et seq.* Further, section 31.001 states the purpose of subtitle B is to protect the public interest in the rates and services of electric utilities. *See id.* § 31.001(a). Thus, section 33.102 grants a person a right of access to the names and addresses of electric utility customers who reside outside the city.

You argue section 33.102 makes confidential the telephone numbers of electric utility customers who reside outside the city and whose information is not confidential under section 182.052. You assert because the legislature excluded customer telephone numbers from the information subject to release under section 33.102, this information is confidential. In general, section 552.101 only excepts information from disclosure where the express language of a statute makes certain information confidential or states that information shall not be released to the public. *See* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express, and confidentiality requirement will not be implied from statutory structure), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to public). The plain language of section 33.102 requires the city to release certain information. This section does not expressly make any information confidential. Further, we note information cannot be withheld from public disclosure by negative implication simply because a statute designates other specific information as public information. Open Records Decision No. 525 at 4 (1989). Accordingly, the city may not withhold the telephone numbers of the electric utility customers at issue under section 552.101 on the basis of section 33.102.

The requestor asserts section 33.102 provides him a right of access to the requested telephone numbers and addresses of both water and electric utilities customers that are generally confidential under section 182.052. We note the requestor only seeks information pertaining

to utilities customers who reside outside the city. As discussed above, section 33.102 grants a person a right of access to the names and addresses of electric utility customers who reside outside the city. Thus, the requestor does not have a right of access to information pertaining to those individuals who are customers of solely the city's water utility. Further, section 33.102 only provides access to the names and addresses of those electric utility customers. Thus, the requestor does not have a right of access to the requested telephone numbers of the electric utility customers. You state the city has released the requested names of electric utility customers. Therefore, pursuant to section 33.102, the city must generally release the requested addresses of electric utility customers to the requestor.

Because section 182.052 of the Utilities Code makes the addresses of electric utility customers who requested confidentiality for their personal information confidential and section 33.102 of the Utilities Code gives an individual a right of access to the addresses of electric utility customers who reside outside the city, we must address the conflict between section 182.052 and section 33.102. Where information falls within both a general and a specific statutory provision, the specific provision prevails over the general statute. *See* Gov't Code § 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision unless the general provision is the later enactment and the manifest intent is that the general provision prevail); *Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones). In this instance, section 182.052 generally makes confidential the personal information of all utilities customers who timely request confidentiality under section 182.052, while section 33.102 specifically grants a right of access to the addresses of electric utility customers who reside outside the city. Thus, the statutory right of access granted to the requestor by section 33.102 of the Utilities Code prevails over the more general confidentiality provision of section 182.052 of the Utilities Code. Therefore, notwithstanding section 182.052, the city must release all the requested addresses of electric utility customers pursuant to section 33.102.

In summary, the city must withhold the addresses and telephone numbers of customers of only the city's water utility who timely requested confidentiality for their personal information under section 182.052 of the Utilities Code pursuant to section 552.101 of the Government Code. The city must withhold the telephone numbers of the electric utility customers who timely requested confidentiality for their personal information under section 182.052 pursuant to section 552.101. 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,

A handwritten signature in black ink that reads "Jennifer Luttrall". The signature is written in a cursive style with a large initial "J".

Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/som

Ref: ID# 473172

Enc. Submitted documents

c: Requestor  
(w/o enclosures)