



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 16, 2013

Mr. Jeff Ulmann
Counsel for the City of Bartlett
McKamie Krueger, L.L.P.
223 West Anderson Lane, Suite A105
Austin, Texas 78752

OR2013-00968

Dear Mr. Ulmann:

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# 476202.

The City of Bartlett (the "city"), which you represent, received a request for all utility bills for four named individuals and any of their related businesses from a specified time period. You claim some of 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 representative sample of information.

Initially, we note the city has only submitted information responsive to the requested utility bills of individuals. Although you state the city submitted a representative sample of information, the submitted information is not representative of all of the information requested. Thus, we find the submitted information is not representative of the information responsive to the requested utility bills for the businesses. This open records letter applies to only the types of information you have submitted for our review. Therefore, this ruling does not authorize the withholding of any other requested records to the extent those records contain substantially different types of information than that submitted to this office. *See* Gov't Code § 552.302 (where request for attorney general decision does not comply with requirements of section 552.301 of the Government Code, information at issue is presumed to be public). Thus, to the extent the requested utility bills for the businesses existed and were maintained by the city on the date the city received the request for information, we

presume the city has released such information. If not, the city must do so at this time. *See id.* §§ 552.301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to the requested information, it must release the information as soon as possible). If you believe any portion of this 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 note some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2012-20729 (2012). In that decision, we ruled, in part, (1) the city must withhold the personal information we have marked under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code, if the customer whose information is at issue requested confidentiality of his personal information before the city received the present request for information, but may not withhold any of the remaining information at issue on this basis, and (2) the city must withhold the account numbers we marked under section 552.136 of the Government Code. We have no indication the law, facts, and circumstances on which the prior ruling was based have changed. Accordingly, to the extent the requested information is identical to the information at issue in that ruling, we conclude the city must rely on Open Records Letter No. 2012-20729 as a previous determination and withhold or release such information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the requested information is not encompassed by the prior ruling, we will consider the exceptions you claim.

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 make confidential, 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). We note a post office box number is not an address for the purposes of section 182.052. 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.

The city states the submitted information contains information that is confidential under section 182.052 of the Utilities Code and does not indicate any of the exceptions to confidentiality under section 182.054 apply in this instance. You have provided documentation that reflects two of the named individuals have elected confidentiality of their personal information. However, the documentation you have submitted does not reflect the individuals have requested confidentiality for their utility usage or billing information. Further, one of the submitted forms does not indicate whether that individual's confidentiality election was made before the city received the request. Therefore, we find the city must withhold these individuals' personal information, which we have marked, under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code, to the extent these individuals requested confidentiality of their personal information before the city received the request for information. If one of the individuals did not request confidentiality before the city received the request for information, the city may not withhold that individual's information under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code. In either instance, these individuals' remaining information does not constitute personal information for purposes of section 182.052 of the Utilities Code. Therefore, the remaining information for these individuals 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 requested information pertains to two additional individuals. You have not provided confidentiality election forms for these individuals. Thus, we are unable to determine if the two additional individuals 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 utility usage and billing information if the individuals timely made written requests 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 individuals timely elected confidentiality for their utility usage and billing information, then

the city has the discretion to release utility usage and billing information, notwithstanding the individuals' requests for confidentiality. In either circumstance, to the extent the individuals timely elected confidentiality for their personal information under section 182.052, the city must withhold the individuals' personal information, which we have marked, under section 552.101 in conjunction with section 182.052. However, if the individuals did not timely elect confidentiality for their personal, utility usage, or billing 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).

We note portions of the remaining information are subject to section 552.136 of the Government Code. Section 552.136 states, "Notwithstanding any other provision of this chapter, 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); *see also id.* § 552.136(a) (defining "access device"). Upon review, we find the city must withhold the account numbers we have marked under section 552.136 of the Government Code.

In summary, to the extent the requested information is identical to the information at issue in that ruling, we conclude the city must rely on Open Records Letter No. 2012-20729 as a previous determination and withhold or release such information in accordance with that ruling. With respect to the two individuals whose confidentiality request forms you provided, the city must withhold these individuals' personal information, which we have marked, under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code, to the extent these individuals requested confidentiality of their personal information before the city received the request for information. With respect to the remaining individuals, if the primary source of water for the city is not a sole-source designated aquifer, then the city must withhold the utility usage and billing information if the individuals timely made written requests for confidentiality for that information under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code. If these individuals timely elected confidentiality for their personal information, the city must withhold the individuals' personal information, which we have marked, under section 552.101 in conjunction with section 182.052 of the Utilities Code. The city must also withhold the account numbers we have marked under section 552.136 of the Government Code. The city must release the remaining information.

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 cursive script, appearing to read "Jennifer Burnett".

Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/tch

Ref: ID# 476202

Enc. Submitted documents

c: Requestor
(w/o enclosures)