



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 23, 2013

Mr. Joe Torres, III
Counsel for the City of Alice
216 North Texas Boulevard, Suite 2
Alice, Texas 78332

OR2013-01317

Dear Mr. Torres:

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# 477164.

The City of Alice (the "city"), which you represent, received a request for the billing information, names, and dates of birth for three specified addresses. You claim that 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.

Initially, we note you have not submitted the requested dates of birth or any information pertaining to one of the specified addresses. Thus, to the extent this information existed and was maintained by the city when the request was received, we assume it has been released. If such information has not been released, then it must be released at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we must address the city's obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten-business-days after receiving the request. *See* Gov't Code § 552.301(b). The city received the instant request on October 29, 2012.

We understand the city was closed on November 12, 2012. This office does not count the day the request was received or holidays observed by a governmental body as business days for the purpose of calculating a governmental body's deadlines under the Act. Accordingly, the city's ten-business-day deadline was November 13, 2012. However, the envelope in which you submitted your request for a decision bears a postmark date of November 14, 2012. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Thus, we find the city failed to comply with the requirements of section 552.301 in requesting this decision.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *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, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will consider the applicability of this section to 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 is confidential under section 182.052 of the Utilities Code. We understand the primary source of water for the city’s utility services is not a sole-source designated aquifer. You state the customers at issue requested confidentiality for their personal information. Although you seek to withhold the invoice records in their entirety, we find that because the customers did not request confidentiality for consumption and billing information, the city may not withhold the portion of the submitted information that relates to consumption and billing. *See* Open Records Decision No. 478 at 2 (1987) (language of confidentiality statute controls scope of protection). Further, as noted above, personal information does not include an individual’s name, so this information also may not be withheld. However, based on your representations and our review, we find the city must withhold the customers’ addresses and telephone numbers, which we have marked, under section 552.101 of the Government Code in conjunction with section 182.052(a) of the Utilities Code.

We note the remaining information includes utility account numbers. 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.”¹ Gov’t Code § 552.136(b). An access device number is one that may be used to “(1) obtain money, goods, services, or another thing of value; or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* § 552.136(a). Upon review, we find the submitted utility account numbers constitute access device numbers for purposes of section 552.136. Thus, the city must withhold the account numbers we have marked under section 552.136.

In summary, the city must withhold the customers’ addresses and telephone numbers that we have marked under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code. The city must withhold the account numbers we have marked under section 552.136 of the Government Code. The city must release the remaining information.

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

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 'Sarah Casterline', with a long horizontal flourish extending to the right.

Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/tch

Ref: ID# 477164

Enc. Submitted documents

c: Requestor
(w/o enclosures)