



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 21, 2013

Ms. Barbara Bouleware-Wells
Counsel for the City of Bartlett
McKamie Krueger, LLP
223 West Anderson Lane, Suite A105
Austin, Texas 78752

OR2013-02947

Dear Ms. Bouleware-Wells:

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# 479754.

The City of Bartlett (the "city"), which you represent, received a request for information pertaining to the city's destruction of documents, all public information requests submitted to the city during a specified time period, and utility read sheets used in utility billing audits by a named individual. 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.

We first note you have only submitted copies of utility read sheets. Thus, although you state the city has submitted a representative sample of information requested, the submitted information is not representative of information pertaining to the city's destruction of documents or copies of public information requests submitted to the city. This open records letter ruling is applicable only to the type of information you have submitted for our review. *See* Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988). This ruling does not authorize the city to withhold any types of information that are substantially different from the type of information the city has submitted to this office. *See* Gov't Code §§ 552.301(e)(1)(D), .302 (where request for attorney general decision does not comply with requirements of Gov't Code § 552.301, information at issue is presumed to be public). Thus, to the extent any information pertaining to the city's destruction of documents or copies of

public information requests submitted to the city existed when the city received the request for information, we assume the city has released any such documents. If the city has not done so, then the city must do so immediately. *See id.* §§ 552.221, .301, .302; Open Records Decision No. 664 (2000). We note the Act does not require a governmental body to release information that did not exist at the time the request for information was received or create new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

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. 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, 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 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 service is 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.

In this instance, we understand none of the exceptions listed in section 182.054 are applicable to the submitted information. You state, and have submitted documentation

showing, some of the customers have timely requested confidentiality under section 182.052 for their personal information. However, we are unable to determine which of the customers in the submitted information timely requested confidentiality for their personal information. Accordingly, to the extent the customers at issue timely made a written request for confidentiality for their personal information, the city must withhold the home addresses for those customers under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code. To the extent the customers did not timely elect confidentiality for their personal information, the city may not withhold the customers' home addresses under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code. In either case, the city may not withhold the addresses of business, governmental, and other artificial entities, which we have marked for release, under section 552.101 on that basis.

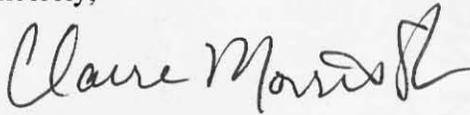
Because we are unable to determine whether the city's primary source of water is a sole-source designated aquifer, we must rule in the alternative for the customers' water usage information. Accordingly, if the primary source of water for the city is not a sole source designated aquifer, then the city must withhold, under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code, the water usage information of each customer who timely made a written request for confidentiality for such information. Conversely, if the primary source of water is a sole-source aquifer and the customers at issue timely elected confidentiality for their water usage information, then the city has the discretion to release water usage information, notwithstanding the customers' requests for confidentiality. However, in either case, if a customer did not timely elect confidentiality for water usage information, then the city may not withhold that customer's water usage 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). Further, in either case, the city may not withhold the water usage information of business, governmental, and other artificial entities, which we marked for release, under section 552.101 on that basis.

In summary, to the extent the individual customers timely made a written request for confidentiality for their personal information, the city must withhold the home addresses for those individual customers under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code. If the primary source of water for the city is not a sole source designated aquifer, then the city must withhold, under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code, the water usage information of individual customers who timely made a written request for confidentiality for such information. Conversely, if the primary source of water is a sole-source aquifer and the individual customers at issue timely elected confidentiality for their water usage information, then the city has the discretion to release water usage information, notwithstanding the individual customers' requests for confidentiality. 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 479754

Enc. Submitted documents

c: Requestor
(w/o enclosures)