



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 28, 2013

Mr. Warren M.S. Ernst
Chief of the General Counsel Division
City of Dallas
1500 Marilla Street, Room 7DN
Dallas, Texas 75201

OR2013-03472

Dear Mr. Ernst:

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# 480186.

The City of Dallas (the "city") received a request for information pertaining to the water utility services provided for a specified address for the year of 2011, including name of the person or entity making payments and payments made. 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 representative sample of information.¹

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. You acknowledge, and we agree, the city failed to comply with its ten-business-day deadline under section 552.301(b) in requesting this decision. *See* Gov't Code § 552.301(a)-(b). Pursuant to section 552.302 of the Government Code, a governmental body's failure to

¹We assume that 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.

comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released, unless the governmental body demonstrates a compelling reason 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). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). Because the applicability of section 552.101 of the Government Code can provide a compelling reason to withhold information from disclosure, we will consider your argument under this section.

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 of the Government Code 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. 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.

You state that the information at issue pertains to a customer who timely requested confidentiality under section 182.052. You also state that none of the exceptions to confidentiality under section 182.054 apply in this instance. We understand that the primary source of water for the city's utility services is not a sole-source designated aquifer. Based on your representations and our review, the city must withhold the customer's personal information, the volume or units of the customer's utility usage, and the amounts billed to or collected from the customer's utility usage, which we have marked, under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code. However, we find none of the remaining information consists of personal information or information relating to volume or units of utility usage, or amounts billed to or collected from the individual for utility usage. Thus, the remaining information is not confidential under section 182.052 of the Utilities Code and may not be withheld under section 552.101 on that basis.

We note the remaining information contains the customer's utility account number that is subject to section 552.136 of the Government Code.² 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); *see id.* § 552.136(a) (defining "access device"). This office has found that customer utility account numbers are access device numbers for purposes of section 552.136. Therefore, the city must withhold the customer utility account number we have marked under section 552.136 of the Government Code.

In summary, the city must withhold the customer's personal information, the volume or units of the customer's utility usage, and the amounts billed to or collected from the customer for that utility usage, which 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 customer utility account number we have marked under section 552.136 of the Government Code. 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,

²The 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).

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 'Thana Hussaini', with a horizontal line drawn across it.

Thana Hussaini
Assistant Attorney General
Open Records Division

TH/som

Ref: ID# 480186

Enc. Submitted documents

c: Requestor
(w/o enclosures)