



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 22, 2013

Ms. Paige H. Saenz
Counsel for City of Bartlett
McKamie Krueger & Knight, L.L.P.
223 West Anderson Lane, Suite A105
Austin, Texas 78752

OR2013-12559

Dear Ms. Saenz:

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# 493864.

The City of Bartlett (the "city"), which you represent, received a request for twelve categories of information, including certain utility billing information. We understand you have released some of the responsive information to the requestor. You claim 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 We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses information made confidential by other statutes, including section 182.052 of the Utilities Code, which provides in relevant part:

¹We 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 those records contain substantially different types of information than those submitted to this office.

(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) includes 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). There is no indication any of the exceptions listed in section 182.054 of the Utilities Code are applicable to the submitted information. *See* Util. Code § 182.054.

You raise section 182.052 for the submitted residential utility customer account information. You have submitted the confidentiality election forms of the two customers whose information is at issue. We note they each elected to keep their personal information, utility usage, and billing and collection information confidential before the city received the request for information. We have marked the personal and billing information of the two customers in the submitted information. However, we note you have not informed us whether the city's primary source of water is a sole-source designated aquifer. Accordingly, we find the city must withhold the personal information we have marked under section 552.101 in conjunction with section 182.052 of the Utilities Code. If the city's primary source of water is not a sole-source designated aquifer, the city must also withhold the billing information we have marked pursuant to section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code. If the city's primary source of water is a sole-source designated aquifer, then the city has the discretion to release the billing information, regardless of the customers' requests for confidentiality. Upon review, we find the remaining information is not confidential under section 182.052, and the city may not withhold any portion of it under section 552.101 on that basis.

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.”² 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 utility account numbers we have marked 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 of the Government Code.

In summary, the city must withhold the personal information we have marked under section 552.101 in conjunction with section 182.052 of the Utilities Code. If the city’s primary source of water is not a sole-source designated aquifer, the city must also withhold the billing information we have marked pursuant to section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code. If the city’s primary source of water is a sole-source designated aquifer, then the city has the discretion to release the billing information, regardless of the customers’ requests for confidentiality. The city must withhold the account numbers 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Michelle R. Garza
Assistant Attorney General
Open Records Division

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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).

Ref: ID# 493864

Enc. Submitted documents

c: Requestor
(w/o enclosures)