



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 24, 2015

Ms. Amy L. Sims
Deputy City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2015-17506

Dear Ms. Sims:

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# 577143 (City File No. 1153).

The City of Lubbock (the "city") received a request for information regarding any outstanding utility bills or open violations for a specified address. 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 information.

Initially, we note you have not submitted any information pertaining to open violations for the specified address. To the extent any information responsive to this portion of the request existed when the city received the request, we assume you have released it. If you have not released any such information to the requestor, you must do so at this time. *See* Gov't Code §§ 552.006, .301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

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. Section 552.101 encompasses information that other statutes make confidential, such as section 182.052 of the Utilities Code. This section 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) is defined as "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). Water service is included in the scope of utility services covered by section 182.052. Util. Code § 182.051(3). There is no indication the exceptions listed in section 182.054 are applicable to the submitted information.

We understand the primary source of water for the city's utility service is not a sole-source designated aquifer. The city has submitted the confidentiality election form of the utility customer at issue in which the customer elected to withhold the customer's personal information. Thus, the city must withhold the individual's address, telephone number, and social security number under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code.¹ *See* ORD 625 at 7 (character of requested information as public or not public must be determined at time request for information is made). However, we find the remaining information is not subject to section 182.052 of the Utilities Code and the city may not withhold it under section 552.101 of the Government Code.

We understand you to contend the name of the individual whose information is at issue is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 521.051 of the Business and Commerce Code. Section 521.051(a) of the Business and Commerce Code provides:

A person may not obtain, possess, transfer, or use personal identifying information of another person without the other person's consent and with intent to obtain a good, a service, insurance, an extension of credit, or any other thing of value in the other person's name.

¹As we make this determination, we do not address your remaining arguments against disclosure of this information.

Bus. & Comm. Code § 521.051(a). “Personal identifying information” means “information that alone or in conjunction with other information identifies an individual” and includes an individual’s name. *Id.* § 521.002(a)(1)(A). We note section 521.051(a) of the Business and Commerce Code does not prohibit the transfer of personal identifying information of another person unless the transfer is made with the intent to obtain a good, a service, insurance, an extension of credit, or any other thing of value in the other person’s name without that person’s consent. *See id.* § 521.051(a). In this instance, the city’s release of the information at issue would be for the purpose of complying with the Act, and not “with intent to obtain a good, a service, insurance, an extension of credit, or any other thing of value[.]” *See id.* Therefore, section 521.051(a) of the Business and Commerce Code does not prohibit the city from transferring the requested information. Accordingly, the city may not withhold the information at issue under section 552.101 of the Government Code in conjunction with section 521.051 of the Business and Commerce Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82.

Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has also found personal financial information not relating to a financial transaction between an individual and a governmental body is generally excepted from required public disclosure under common-law privacy. *See* Open Records Decision No. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information). However, this office has determined the names, addresses, telephone numbers, and dates of birth of members of the public are generally not excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 554 at 3 (1990) (disclosure of person’s name, address, or telephone number not invasion of privacy), 455 at 7 (1987) (home addresses, telephone numbers, and dates of birth not private).

Upon review, we find the city has failed to demonstrate the remaining information at issue satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the city may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the city must withhold the customer’s address, telephone number, and social security number under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities 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.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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 577143

Enc. Submitted documents

c: Requestor
(w/o enclosures)