



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 13, 2017

Ms. Sarah M. Griffin
Counsel for the City of Hearne
Denton Navarro Rocha Bernal Hyde & Zech
2500 West William Cannon Drive, Suite 609
Austin, Texas 78745-5320

OR2017-03251

Dear Ms. Griffin:

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# 645567.

The City of Hearne (the "city"), which you represent, received a request for mailing addresses, residential addresses, telephone numbers, and e-mail addresses for all elected city officials. You claim the submitted information is excepted from disclosure under sections 552.101, 552.117, and 552.136 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have not submitted telephone numbers or e-mail addresses for elected city officials. To the extent any information responsive to this portion of the request existed on the date the city received the request, we assume you have released it. If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(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).

¹Although you raise section 552.024 of the Government Code, we note this section is not an exception to disclosure. Rather, this section permits a current or former official or employee of a governmental body to choose whether to allow public access to certain information relating to the current or former official or employee that is held by the employing governmental body. *See* Gov't Code § 552.024.

Next, we note only the submitted names and addresses are responsive to this request. Accordingly, the remaining submitted information is not responsive to the instant request. The city need not release non-responsive information in response to this request, and this ruling will not address that information.²

Section 552.101 of the Government Code exempts 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 protected by other statutes. Section 182.052 of the Utilities Code provides in relevant part the following:

(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, but does not include an individual’s name. *See id.* § 182.051(4); *see also* Open Records Decision No. 625 (1994) (construing statutory predecessor). The scope of utility services covered by section 182.052 includes water, wastewater, sewer, gas, garbage, electricity, or drainage service. Util. Code § 182.051(3).

You state the responsive information consists of the personal information of residential utility customers. Furthermore, you have provided the confidentiality election form for one of the individuals at issue. You do not indicate any of the exceptions to confidentiality under section 182.054 apply in this instance. We understand 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 of the submitted information, we find the city must withhold the personal information you have highlighted for the individual whose confidentiality election form you have provided under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code. *See* ORD 625 at 7 (character of requested information as public or not public must be determined at time request for information is made). In

²As our ruling is dispositive, we need not address your arguments against disclosure of this information.

addition, to the extent the remaining customers whose information is at issue elected confidentiality for their billing information prior to the date the city received the present request for information, the city must also withhold the personal information you have marked pertaining to these customers under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code.³ If the customers whose information is at issue did not elect confidentiality for their personal information prior to the date the city received the present request for information, the city may not withhold their personal information under section 552.101 in conjunction with section 182.052(a). However, the responsive names are not confidential under section 182.052(a), and the city may not withhold them under section 552.101 on that ground. *See* Util. Code § 182.051(4).

To the extent the customers whose information is at issue did not elect confidentiality for their personal information prior to the date the city received the present request for information, you assert their responsive information is subject to section 552.117 of the Government Code. Section 552.117 excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). However, section 552.117(a)(1) is applicable only to information a governmental body holds in an employment context. Upon review, we find the city does not maintain the remaining responsive information in an employment capacity. Therefore, the city may not withhold any of the remaining responsive information under section 552.117 of the Government Code.

In summary, the city must withhold the personal information you have highlighted for the individual whose confidentiality election form you have provided under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code. To the extent the remaining customers whose information is at issue elected confidentiality for their billing information prior to the date the city received the present request for information, the city must also withhold the personal information you have marked pertaining to these customers under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code. The city must release the remaining responsive 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.

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/sdk

Ref: ID# 645567

Enc. Submitted documents

c: Requestor
(w/o enclosures)