



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 24, 2017

Ms. Gretchen Reuwer
Public Affairs Manager
Officer for Public Information
New Braunfels Utilities
P.O. Box 310289
New Braunfels, Texas 78131-0289

OR2017-11294

Dear Ms. Reuwer:

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# 659283.

New Braunfels Utilities ("NBU") received a request for a summary of the last twelve utility bills for a specified address. You state NBU does not have information responsive to a portion of the request.¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.133 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

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 section encompasses information protected by other statutes, including

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

²Although you do not cite to section 552.101 of the Government Code in your brief, we understand you to raise this exception based on the substance of your argument.

the Utilities Code. 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) means an individual's address, telephone number, or social security number, 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). 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 the submitted information pertains to a utility customer who timely requested confidentiality under section 182.052. We understand the primary source of water for NBU's utility services is not a sole-source designated aquifer. You do not indicate, and it does not otherwise appear, any of the exceptions to confidentiality under section 182.054 apply in this instance. Upon review, we find portions of the submitted information, which we marked, consist of the personal information and information relating to the volume or units of utility usage of a customer who has elected confidentiality for its billing information prior to the date NBU received the present request for information. Therefore, we find NBU must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code.³ However, we find the remaining information does not constitute personal information of a customer or the volume or units of utility usage and the amounts billed to or collected for that utility usage. Therefore, the remaining information is not confidential under section 182.052, and the city may not withhold it under section 552.101 on that basis.

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

Section 552.133 of the Government Code exempts from disclosure a public power utility's information that is "reasonably related to a competitive matter." Gov't Code § 552.133(b). Section 552.133 provides in relevant part:

(a) In this section, "public power utility" means an entity providing electric or gas utility services that is subject to the provisions of this chapter.

(a-1) For purposes of this section, "competitive matter" means a utility-related matter that is related to the public power utility's competitive activity, including commercial information, and would, if disclosed, give advantage to competitors or prospective competitors. The term:

(1) means a matter that is reasonably related to the following categories of information:

...

(F) customer billing, contract, and usage information, electric power pricing information, system load characteristics, and electric power marketing analyses and strategies[.]

Id. § 552.133(a), (a-1)(1)(F). Section 552.133(a-1)(2) provides fifteen categories of information that are not competitive matters. *Id.* § 552.133(a-1)(2).

We understand NBU is a municipally owned utility for the purposes of section 552.133. You assert the remaining information pertains to NBU's "competitive customer information," and therefore, is a competitive matter pursuant to subsection 552.133(a-1)(1)(F). Further, the information at issue is not among the fifteen categories of information expressly excluded from the definition of "competitive matter" by section 552.133(a-1)(2). Based on your representations and our review, we find the remaining information relates to a competitive matter, and NBU must withhold it under section 552.133 of the Government Code.

In summary, NBU must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code. NBU must withhold the remaining information under section 552.133 of the Government Code.

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,

A handwritten signature in black ink, appearing to read "K Hillis", written in a cursive style.

Kieran Hillis
Assistant Attorney General
Open Records Division

KH/sb

Ref: ID# 659283

Enc. Submitted documents

c: Requestor
(w/o enclosures)