



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 10, 2017

Ms. Linda Pecina
City Secretary
City of Hearne
209 Cedar Street
Hearne, Texas 77859

OR2017-15261

Dear Ms. Pecina:

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# 665631.

The City of Hearne (the "city") received a request for a list of homes, apartments, and other dwellings no longer serviced with utilities by the city as of the date of the request. 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 information.

Initially, we note only the information pertaining to homes, apartments, or other dwellings is responsive to the instant request. This ruling does not address the public availability of any information that is not responsive to the request and the city is not required to release such information in response to this request.

Section 552.136 of the Government Code provides, "[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."¹ Gov't Code § 552.136(b). Section 552.136(a) defines "access device" as "a card, plate, code, account

¹The 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).

number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* § 552.136(a). Upon review, the city must withhold the responsive account numbers under section 552.136 of the Government Code.

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). Section 182.054 of the Utilities Code provides six exceptions to the disclosure prohibition found in section 182.052. *See* Util. Code § 182.054.

The city does not inform this office whether the customers whose information is at issue timely requested confidentiality under section 182.052 prior to the date the city received the instant request for information. Further, the city has not provided confidentiality election forms for the customers whose responsive information is at issue. Thus, we must rule conditionally. To the extent the customers whose responsive information is at issue elected confidentiality for their personal information prior to the date the city received the present request for information, the city must withhold their addresses under section 552.101 of the Government Code in conjunction with section 182.052(a). However, if the customers at issue did not elect confidentiality for their personal information prior to the date the city received the present request for information, their addresses are not confidential under

section 182.052(a) and the city may not withhold such information under section 552.101 of the Government Code on that basis.

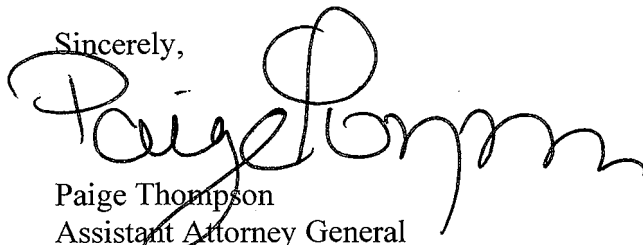
Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. 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. Upon review, we find none of the remaining responsive information is highly intimate or embarrassing information and of no legitimate public interest, and it may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the city must withhold the responsive account numbers under section 552.136 of the Government Code. To the extent the customers whose responsive information is at issue elected confidentiality for their personal information prior to the date the city received the present request for information, the city must withhold their addresses under section 552.101 of the Government Code in conjunction with section 182.052(a) 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.

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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/eb

Ref: ID# 665631

Enc. Submitted documents

c: Requestor
(w/o enclosures)