



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 8, 2017

Ms. Akilah Mance  
Counsel for the City of Tomball  
Olson & Olson, L.L.P.  
Wortham Tower  
2727 Allen Parkway, Suite 600  
Houston, Texas 77019-2133

OR2017-17812

Dear Ms. Mance:

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# 669698 (Ref. No. COT17-005).

The City of Tomball (the "city"), which you represent, received a request for the addresses and dates of disconnection for residential properties where water was turned off during a specified time period. You state you will redact information pursuant to section 552.136(c) of the Government Code.<sup>1</sup> You claim portions of the submitted information are 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 marked a portion of the submitted information as not responsive to the instant request for information. This ruling does not address the public availability of

---

<sup>1</sup>Section 552.136 of the Government Code permits a governmental body to withhold the information described in section 552.136(b) without the necessity of seeking a decision from this office. *See* Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

non-responsive information, and the city need not release non-responsive information to the requestor.

You state a portion of the requested information was the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2016-22172 (2016) and 2017-09306 (2017). There is no indication the law, facts, and circumstances on which the prior rulings were based have changed. Accordingly, for the responsive information that is identical to the information previously requested and ruled upon by this office, we conclude the city must continue to rely on Open Records Letter Nos. 2016-22172 and 2017-09306 as previous determinations and withhold or release the identical information in accordance with those rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). To the extent the responsive information was not subject to prior rulings, we will address your argument under section 552.101 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 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. Util. Code § 182.051(3). We note because section 182.052 is intended to protect the safety and privacy of individual customers, this statute is applicable only to information pertaining to natural persons, and

does not protect information relating to business, governmental, and other artificial entities. *See* ORD 625 at 4-5 (in context of section 182.051 (4) of the Utility Code, “individual” means only natural persons and does not include artificial entities).

You state the responsive information consists of the personal information of residential utility customers who timely requested confidentiality under section 182.052. 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. Upon review, we find some of the responsive information pertains to business entities. This information, which we have marked for release, may not be withheld under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code. Based on your representations and our review of the responsive information, we find, with the exception of the information we marked for release, the city must withhold the addresses of residential water customers 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). However, we find no portion of the remaining information consists of personal information of residential customers for purposes of section 182.052 of the Utilities Code, and the city may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

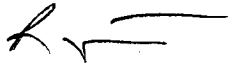
In summary, for the responsive information that is identical to the information previously requested and ruled upon by this office, the city must continue to rely on Open Records Letter Nos. 2016-22172 and 2017-09306 as previous determinations and withhold or release the identical information in accordance with those rulings. With the exception of the information we marked for release, the city must withhold the addresses of residential water 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 information.

You ask this office to issue a previous determination permitting the city to withhold information made confidential under 182.052 of the Utilities Code without seeking a ruling from this office. *See* Gov’t Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). We decline to issue such a previous determination at this time. Accordingly, this letter ruling is limited to the particular records 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 records 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,



Kelly McWethy  
Assistant Attorney General  
Open Records Division

KSM/sb

Ref: ID# 669698

Enc. Submitted documents

c: Requestor  
(w/o enclosures)