



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 25, 2017

Ms. Tracey L. Jennings
Counsel for the City of Iowa Park
Law Office of Tracey Jennings
200 East Tarrant Street
Bowie, Texas 76230

OR2017-24389

Dear Ms. Jennings:

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# 681628.

The City of Iowa Park (the "city"), which you represent, received a request for information pertaining to utilities at a specified address during a specified time period. The city claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, the city provides documentation showing it has notified an individual of the right to submit comments to this office why some of the submitted information should not be released.¹ See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the submitted arguments 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 exception encompasses section 182.052 of the Utilities Code, which provides in part:

¹As of the date of this letter, this office has not received comments from any third party explaining why any of the submitted information should not be released.

(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.

Upon review, we find portions of the submitted information, which we have marked, are generally subject to section 182.052(a) of the Utilities Code. We understand the primary source of water for the city's utility services is not a sole-source designated aquifer. However, the city does not inform this office whether the customer 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 a confidentiality election form for the customer whose information is at issue. Thus, we must rule conditionally. If the customer whose information is at issue elected confidentiality for his personal or billing information prior to the date the city received the present request for information, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 182.052(a) of the Utilities Code. However, if the customer at issue did not elect confidentiality for his personal or billing information prior to the date the city received the present request for information, then the information we marked is 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. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See, e.g.*, Open Records Decision Nos. 545 (1990) (common-law privacy protects mortgage payments, assets, bills, and credit history), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information). Upon review, we find the city has not demonstrated any of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, the city may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses the doctrine of constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). After review of the remaining information at issue, we find the city has not demonstrated any portion of the remaining information falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Therefore, the city may not withhold any of the remaining information at issue under section 552.101 on the basis of constitutional privacy.

Some of the remaining information is subject to section 552.136 of the Government Code.² Section 552.136 provides, "Notwithstanding 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." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). Accordingly, the city must withhold the account number we have marked under section 552.136 of the Government Code.

In summary, if the customer whose information is at issue elected confidentiality for his personal or billing information prior to the date the city received the present request for information, then the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 182.052(a) of the Utilities Code. The

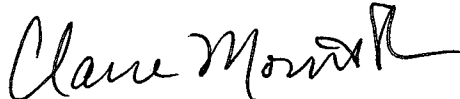
²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

city must withhold the account number we have marked under section 552.136 of the Government 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/tdw

Ref: ID# 681628

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)