



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 20, 2018

Ms. Amy L. Sims
Deputy City Attorney
Office of the City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2018-03851

Dear Ms. Sims:

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# 697193 (File Nos. 1771, 1776, and 1777).

The City of Lubbock (the "city") received three requests from different requestors for specified information related to backflow devices due for testing.¹ You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We

¹We note the city sought and received clarification of the information requested. See Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

have considered the exception you claim and reviewed the submitted representative sample of information.²

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. Section 552.101 of the Government Code encompasses section 182.052 of the Utilities Code, which 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). Water service is included in the scope of utility services covered by section 182.052. *Id.* § 182.051(3). “Personal information” under section 182.052(a) includes an individual’s address, but does not include the individual’s name. *See id.* § 182.051(4); *see also* Open Records Decision No. 625 (1994) (construing statutory predecessor). We note a post office box number is not an address for the purposes of section 182.052. A customer’s request for confidentiality must precede the utility’s receipt of the request for information. ORD 625 at 6. Additionally, because section 182.052 is intended to protect the safety and privacy of individual customers, this statute is applicable to only information pertaining to natural persons, and does not protect information relating to business, governmental, and other artificial entities. *See id.* at 4-5 (in context of section 182.051(4) of the Utilities Code, “individual” means only natural persons and does not include artificial entities).

You contend some of the submitted information is subject to section 182.052. We understand the primary source of water for the city’s utility service is not a sole-source aquifer. We note some of the information at issue pertains to businesses or other artificial

²We assume the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

entities, and not natural persons. As such, the information pertaining to businesses or other artificial entities is not information made confidential by section 182.052, and the city may not withhold such information under section 552.101 of the Government Code on this basis. As to the information pertaining to natural persons, you state the individuals you have indicated made written requests for confidentiality under section 182.052. Thus, the city must withhold the addresses and utility usage information of the natural persons you have indicated who made written requests for confidentiality 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).

You contend some of the remaining information is protected under common-law privacy. 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. We note common-law privacy protects the interests of individuals, not those of corporate and other business entities. *See* Open Records Decision Nos. 620 (1993) (corporation has no right to privacy), 192 (1978) (right to privacy is designed primarily to protect human feelings and sensibilities, rather than property, business, or other pecuniary interests); *see also Rosen v. Matthews Constr. Co.*, 777 S.W.2d 434 (Tex. App.—Houston [14th Dist.] 1989) (corporation has no right to privacy (citing *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950))), *rev'd on other grounds*, 796 S.W.2d 692 (Tex. 1990). We note this office has found that names, telephone numbers, and addresses are generally not excepted from public disclosure under common-law privacy. *See* Open Records Decision No. 455 at 7 (1987). Upon our review, we find you have failed to demonstrate the remaining information is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city may not withhold the remaining information under section 552.101 in conjunction with common-law privacy.

In summary, the city must withhold the addresses and utility usage information of the natural persons you have indicated who made written requests for confidentiality 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.

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 cursive script, appearing to read "Emily Buchanan".

Emily Buchanan
Attorney
Open Records Division

EB/som

Ref: ID# 697193

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)