



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 2, 2019

Ms. Alicia K. Kreh  
Counsel for the City of Haltom  
Taylor Olson Adkins Sralla Elam L.L.P.  
6000 Western Place, Suite 200  
Fort Worth, Texas 76107

OR2019-11746

Dear Ms. Kreh:

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# 763109.

The City of Haltom (the "city"), which you represent, received a request for certain e-mail communications pertaining to Fathom Water Management ("Fathom") and for certain information pertaining to the work schedule of the city's fire department during a specified period of time. You state the city will release some information. You also state the city will redact information pursuant to sections 552.130(c) and 552.147(b) of the Government Code and Open Records Decision No. 684 (2009).<sup>1</sup> You claim some the remaining information is excepted from disclosure under section 552.101 of the Government Code and subject to copyright law. Additionally, you state the release of the submitted information may implicate the proprietary interests of Fathom. Accordingly, the city states, and provides documentation showing, it notified Fathom of the request for information and of the right to submit arguments to this office as to why the submitted information should not be released. *See Gov't Code* § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory

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<sup>1</sup>Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See Gov't Code* § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See id.* § 552.147(b). Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including personal e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. *See* ORD 684.

predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from Fathom. We have considered the submitted arguments and reviewed the submitted information.

Initially, Fathom argues some of the submitted information is not responsive to the request for information. A governmental body must make a good faith effort to relate a request to information that is within its possession or control. *See* Open Records Decision No. 561 at 8 (1990). The city has reviewed its records and determined the documents it has submitted are responsive to the request. Therefore, we find the city has made a good-faith effort to related the instant request to information within its possession or control. Accordingly, we will determine whether the city must release the submitted information under the Act.

Next, Fathom asserts some of the submitted information is excepted from public disclosure under section 552.116 of the Government Code. Section 552.116 excepts from disclosure certain audit working papers. Gov't Code § 552.116. This exception protects the interests of governmental bodies such as the city, not the proprietary interests of private parties. *See* Open Records Decision Nos. 592 at 8 (1991) (discussing statutory predecessor), 522 at 4 (1989) (discretionary exceptions in general). In this instance, the city does not raise section 552.116. Therefore, the city may not withhold any of the information at issue under section 552.116.

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 encompasses information that other statutes make confidential. The city claims 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). Water, sewer, garbage collection, and electricity services

are included in the scope of utility services covered by section 182.052. 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.

We understand the primary source of water for the city's utility services is not a sole-source designated aquifer. Although you assert the submitted information is confidential under section 182.052, you do not inform us, nor provide any documentation demonstrating, the customers whose information is at issue timely requested confidentiality of their personal information. Thus, we rule conditionally. To the extent the customers whose information is at issue elected confidentiality prior to the date the city received the present request for information, the city must withhold the utility customers' personal information and utility usage and billing information, which we have marked, under section 552.101 of the Government Code in conjunction with section 182.052(a) of the Utilities Code. If the customers did not elect confidentiality for their information prior to the date the city received the present request for information, the city may not withhold the information at issue under section 552.101 in conjunction with section 182.052(a). In either case, 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.

Fathom also raises section 552.136 of the Government Code. Section 552.136 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." Govt' Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). Upon review, we find the city must withhold the customer account numbers in the remaining information under section 552.136 of the Government Code.

We note some of the remaining information may be subject to copyright law. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, to the extent the customers whose information is at issue elected confidentiality for their information prior to the date the city received the present request for information, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 182.052(a) of the Utilities Code. The city must withhold customer account numbers in the remaining information under section 552.136 of the Government Code. The city must release the remaining information; however, any information protected by copyright may only be released in accordance with copyright law.

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](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 "Michelle Garza", with a long horizontal flourish extending to the right.

Michelle Garza  
Assistant Attorney General  
Open Records Division

MG/gw

Ref: ID# 763109

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

c: Third Party  
(w/o enclosures)