



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 15, 2019

Ms. Denise Frederick
City Attorney
City of Leon Valley
6400 El Verde Road
Leon Valley, Texas 78238-2399

OR2019-19151

Dear Ms. Frederick:

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# 775293 (ORR# 041519-A).

The City of Leon Valley (the "city") received a request for a specified report pertaining to properties that had utility service disconnections during a stated month. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.137 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information, which we marked, is not responsive to the present request for information because it does not consist of the report specified in the request. This ruling does not address the public availability of any information that is not

¹We note the city did not comply with the procedural requirements of section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b). Nonetheless, because sections 552.101 and 552.137 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will consider their applicability to the submitted responsive information. *See id.* §§ 552.007, .302, .352.

responsive to the request and the city is not required to release such information in response to the present request.²

Section 552.101 of the Government Code exempts 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 made confidential by other statutes, such as section 182.052 of the Utilities Code, which provides, in pertinent 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.

Some of the submitted responsive information may be confidential under section 182.052 of the Utilities Code. We note three of the customers listed in the submitted responsive information are businesses. Therefore, none of the information at issue pertaining to these businesses is confidential under section 182.052, and the city may not withhold any of their information under section 552.101. Although you have submitted documentation demonstrating some of the customers whose information is at issue requested confidentiality of their personal information prior to the city’s receipt of the present request, we are unable to determine if all of the natural persons whose information is at issue timely requested confidentiality of their billing, utility usage, and personal information pursuant to section 182.052 of the Utilities Code. Further, you do not inform us whether the city’s primary

²As we are able to make this determination, we need not address your arguments against disclosure of this information.

source of water is a sole-source designated aquifer. Accordingly, we must rule conditionally. If the primary source of water for the city is not a sole-source designated aquifer, then the city must withhold the personal, usage, and billing information pertaining to natural persons within the submitted responsive information under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code, provided the individuals timely made a written request for confidentiality for that information.³ Conversely, if the city's primary source of water is a sole-source aquifer and the individuals timely elected confidentiality for their water usage information, then the city has the discretion to release that information, notwithstanding the individuals' requests for confidentiality. However, if the individuals did not timely elect confidentiality for their personal, usage, and billing information, then the city may not withhold that information under section 552.101 in conjunction with section 182.052. *See* ORD 625 at 7 (character of requested information as public or not public must be determined at time request for information is made).

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. However, 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 an individual's name, address, and telephone number are generally not private information under common-law privacy. *See* Open Records Decision No. 554 at 3 (1990) (disclosure of person's name, address, or telephone number not an invasion of privacy). Upon review, we conclude you have failed to demonstrate any portion of the submitted responsive information is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city may not withhold any portion of the information at issue under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, if the city's primary source of water is not a sole-source designated aquifer, then the city must withhold the personal, usage, and billing information pertaining to natural persons within the submitted responsive information under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code, provided the

³In this instance, as our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

individuals timely made a written request for confidentiality for that information. However, if the city's primary source of water is a sole-source aquifer and the individuals timely elected confidentiality for their water usage information, then the city has the discretion to release that information, notwithstanding the individuals' requests for confidentiality. 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,



Blake Brennan
Attorney
Open Records Division

BB/jxd

Ref: ID# 775293

Enc. Submitted documents

c: Requestor
(w/o enclosures)