



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 14, 2019

Ms. Leslie A. Whitten
Assistant City Attorney
City of College Station
P.O. Box 9960
College Station, Texas 77842

OR2019-22540

Dear Ms. Whitten:

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# 780691 (File No. A19-000485)..

The City of College Station (the "city") received a request for information pertaining to properties that had utility service disconnections during a specified time period. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.133 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

¹We note you did not comply with the requirements of section 552.301 of the Government Code in providing some of the information at issue. *See* Gov't Code § 552.301(b), (e). Nonetheless, because sections 552.101 and 552.133 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will consider the applicability of these sections to the submitted information. *See id.* §§ 552.007, .302, .352.

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

Section 552.133 of the Government Code excepts from disclosure a public power utility's information that is "reasonably related to a competitive matter." Gov't Code § 552.133(b). Section 552.133 provides, in relevant part, the following:

(a) In this section, "public power utility" means an entity providing electric or gas utility services that is subject to the provisions of this chapter.

(a-1) For purposes of this section, "competitive matter" means a utility-related matter that is related to the public power utility's competitive activity, including commercial information, and would, if disclosed, give advantage to competitors or prospective competitors. The term:

(1) means a matter that is reasonably related to the following categories of information:

...

(F) customer billing, contract, and usage information, electric power pricing information, system load characteristics, and electric power marketing analyses and strategies[.]

Id. § 552.133(a), (a-1)(1)(F). Section 552.133(a-1)(2) provides fifteen categories of information that are not competitive matters. *Id.* § 552.133(a-1)(2). The city states it is authorized to "provid[e] utility services through College Station Utilities." Thus, the city states it is a public power utility for the purposes of section 552.133. The city asserts the requested information pertains to competitive matters of the city specifically identified by section 552.133(a-1)(1). Based on these representations and our review, we find the submitted information relates to competitive matters as defined by section 552.133(a-1). Therefore, the city must withhold the submitted electrical information under section 552.133 of the Government Code.³ However, we find the remaining information relates to water service. Section 552.133 applies to electric or gas utility services only, not water services. *Id.* § 552.133(a). Thus, this information is not subject to section 552.133 and the city may not withhold it on that basis.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 of the Government Code encompasses information protected by 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

³As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

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). 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 Utilities Code, "individual" means only natural persons and does not include artificial entities). Water 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.

You assert the remaining information is confidential under section 182.052 of the Utilities Code. We note the submitted information does not contain any information relating to the volume or units of utility usage or the amounts billed to or collected from the customer for utility usage. Further, you do not inform us, nor provide any documentation demonstrating, the customers whose information is at issue timely requested confidentiality of their personal information, which in this case consists of addresses and phone numbers. Finally, we note some of the information at issue may pertain to businesses or other artificial entities, which is not made confidential by section 182.052. Therefore, to the extent the customers whose information is at issue are natural persons who elected confidentiality prior to the date the city received the present request for information, the city must withhold the utility customers' personal information under section 552.101 of the Government Code in conjunction with section 182.052(a) of the Utilities Code. To the extent the submitted information does not pertain to natural persons, or 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 summary, the city must withhold the submitted electrical information under section 552.133 of the Government Code. To the extent the customers whose information is at issue are natural persons who elected confidentiality prior to the date the city received the present request for information, the city must withhold the utility customers' personal information under section 552.101 of the Government Code in conjunction with section 182.052(a) 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,



Sean McCormick
Attorney
Open Records Division

SMC/eb

Ref: ID# 780691

Enc. Submitted documents

c: Requestor
(w/o enclosures)