



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 26, 2019

Ms. Julie P. Doshier  
Counsel for City of DeSoto  
Nichols, Jackson, Dillard, Hager & Smith, LLP  
500 North Akard Street, Suite 1800  
Dallas, Texas 75201

OR2019-33511

Dear Ms. Doshier:

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# 798556 (Your File Ref. # 110972).

The City of DeSoto (the "city"), which you represent, received a request for information pertaining to the disconnection of the requestor's water service. You inform us the city will redact some information pursuant to sections 552.130(c), 552.136(c), and 552.147(b) of the Government Code, as well as Open Records Decision No. 684 (2009).<sup>1</sup> You claim some of the submitted information is excepted from disclosure under section 552.101 of the

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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. 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 552.136(c) of the Government Code authorizes a governmental body to redact, without the necessity of requesting a decision from this office, the information described in section 552.136(b). *Id.* § 552.136(c); *see also id.* § 552.136(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.136(c) to attorney general and governmental body withholding information pursuant to section 552.136(c) must provide certain notice to requestor). 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 under the Act. *Id.* § 552.147(b). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold specific categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts “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 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 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 city’s primary source of water for its utility services is not a sole-source designated aquifer. You state, and provide documentation demonstrating, the individual whose information is at issue is a utility customer who timely requested confidentiality under section 182.052. You state the exceptions listed in section 182.054 do not apply. Upon review, we find the information you marked is subject to section 182.052 of the Utilities Code. Accordingly, the city must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is 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. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 600 (1992) (employee's designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). The Third Court of Appeals has concluded public citizens' dates of birth are protected by common law privacy pursuant to section 552.101. *See Paxton v. City of Dallas*, No. 03 13 00546 CV, 2015 WL 3394061, at \*3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). We note an individual's name, education, prior employment, and personal information are not ordinarily private information subject to common-law privacy. *See* Open Records Decision Nos. 554 (1990), 448 (1986). Upon review, we conclude the city must withhold the public citizen's date of birth you marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, the city failed to demonstrate the remaining information you marked is highly intimate or embarrassing information or of no legitimate public interest. Therefore, the city may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

As noted above, you state you will redact information pursuant to section 552.136 of the Government Code, which 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." Gov't Code § 552.136(b). Section 552.136(a) defines "access device" as "a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument." *Id.* § 552.136(a). Upon review, we find the city has not demonstrated the deposit number you marked consists of an access device number for purposes of section 552.136. Accordingly, the city may not withhold this information, which we have marked for release, under section 552.136 of the Government Code. However, the city must withhold the account number you have marked under section 552.136 of the Government Code.

In summary, the city must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code. The city must withhold the public citizen's date of birth you marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the account number you have marked under section 552.136 of the Government Code. The city must release the remaining information.

Finally, the city asks this office to issue a previous determination that would permit it to withhold dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a ruling from this office. *See* Gov't Code § 552.301 (a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). We decline to issue such a previous determination at this time. Accordingly, 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Erin Groff  
Assistant Attorney General  
Open Records Division

EMG/gw

Ref: ID# 798556

Enc. Submitted documents

c: Requestor  
(w/o enclosures)