



THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

JOHN L. HILL
ATTORNEY GENERAL

December 17, 1974

The Honorable Jonathan Day
City Attorney
City of Houston, Legal Dept.
P. O. Box 1562
Houston, Texas 77001

Open Records Decision No. 63

Re: Billing records of the
Water Department of
the City of Houston

Dear Mr. Day:

In response to a request by the Houston Chronicle under the Texas Open Records Act, Article 6252-17a, section 7(a), V. T. C. S., the City of Houston has asked whether the Water Department's customer files, including credit and billing information, are public records. If we answer in the affirmative, the City wishes to know whether such records must also be made available to credit agencies.

Recently, in Open Records Decision No. 51 (1974), we held that "turn on" and "turn-off" service information of the City of Dallas Water Department, which indicated the customer's name, type of service, previous address, current address, and forwarding address, was public information.

The present request, however, involves certain additional information. The additional information consists of dollar amounts paid for service, dollar amounts owing, penalties assessed against the customer, deposit amounts applied to customer service, a partial description of the customer's premises, a notation as to the customer's employer, and a credit reference.

We do not find that the concept of a constitutional zone of privacy has been authoritatively extended to this sort of financial information. See, California Bankers Association v. Shultz, 94 S. Ct. 1494 (1974) (where the Supreme Court declined to reach that issue). A common element in those cases in which courts have upheld contentions of a tort right to privacy appears to be the inflammatory conduct of the creditor. Annot., Right of Privacy, 138 ALR 22, at 91-93 (1942); see, Santiesteban v. Goodyear Tire and Rubber Co., 306 F.2d 9 (5th Cir. 1962). We cannot say based on the

information before us that the mere disclosure of the requested information by the Houston Water Department pursuant to the public policy embodied in the Open Records Act would constitute this type of tortious invasion of privacy. Of course, individual files may contain information different from the types of examples you have provided to us. If, in fact, other material is located in a particular file which may be confidential, that material should be submitted to this office for a decision prior to release.

You have asked us to distinguish between requests by a journalist and those by a credit agency. The Open Records Act permits no such distinction. V.T.C.S. art. 6252-17a, §5(b); Attorney General Opinion H-263 (1974). However, if this information is covered by the Federal Fair Credit Reporting Act, 15 U.S.C. §1681 et seq., a requestor will be required by section 1681e of that Act to certify his purpose and the use that will be made of the information. We have previously determined that traffic records of the Department of Public Safety are not covered by the Federal Fair Credit Reporting Act since those records are not collected "for the purpose of furnishing consumer reports to third parties." Attorney General Opinion H-263 (1974). See, Porter v. Talbot Perkins Children's Services, 355 F.Supp. 174 (S.D.N.Y. 1973); New York Attorney General Opinion (July 17, 1974).

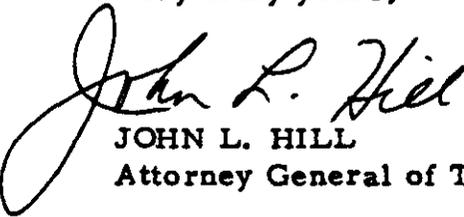
Since the information involved pertains only to transactions between the consumer and the governmental body, 15 USC §1681a(d), and since the Department's credit records were not assembled "for the purpose of furnishing consumer reports to third parties," 15 USC §1681a(f), we are presented with no legal basis for concluding that the federal act extends to the type of customer credit information you have described as being possessed by the Houston Water Department. Accordingly, we do not believe that the Open Records Act permits the Department to distinguish between requestors on the basis of the use they intend to make of the information. Although we have concluded that the Water Department is not precluded from releasing credit information by either a right of privacy or the Federal Fair Credit Reporting Act, the person

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who receives the information may be limited by either or both of these concepts in the use he can make of the information.

It is therefore our conclusion that the material requested by the Houston Chronicle should be disclosed.

Very truly yours,



JOHN L. HILL
Attorney General of Texas

APPROVED:



DAVID M. KENDALL, First Assistant



C. ROBERT HEATH, Chairman
Opinion Committee