



**THE ATTORNEY GENERAL
OF TEXAS**

October 21, 1986

**JIM MATTOX
ATTORNEY GENERAL**

Mr. Paul H. Hayers
City Attorney
City of Electra
101 North Main
Electra, Texas 76360

Open Records Decision No. 443

Re: Whether the Open Records Act,
article 6252-17a, V.T.C.S., requires
a city to release customer utility
bills

Dear Mr. Hayers:

You have asked if the Open Records Act, article 6252-17a, V.T.C.S., requires the city of Electra to grant a citizens' request for access to the city's utility bill ledgers. In a letter to this office, you stated:

The city of Electra has over 1,600 utility customers, each of whom [has] at least one ledger, with several customers having multiple ledgers. The request for information concerns all utility bill ledgers. . . .

We believe that the request for this specific information raises the question of an invasion of privacy of the individuals whose ledger cards would be open to inspection, which in turn might subject the city of Electra and its custodian of records to a cause of action by those individuals. Additionally, it has been held in a number of states that giving unreasonable publicity to private debts is an actionable invasion of the debtor's right of privacy. . . .

The city of Electra acknowledges that certain information contained on the ledger cards should be open to public inspection, this information being that which appears on the top portion of the ledger card concerning the customer's name, address and applicable rate. This information, however, has not been requested and, in any event, would be impossible to provide as the ledger card also shows in each case the billed amount, payment record, and account status. . . .

In Billings v. Atkinson, 489 S.W.2d 858, 859 (Tex. 1973), the Texas Supreme Court said:

The right of privacy has been defined as the right of an individual to be left alone, to live a life of seclusion, to be free from unwarranted publicity. 77 C.J.S. Right of Privacy §1. A judicially approved definition of the right of privacy is that it is the right to be free from the unwarranted appropriation or exploitation of one's personality, the publicizing of one's private affairs with which the public has no legitimate concern, or the wrongful intrusion into one's private activities in such a manner as to outrage or cause mental suffering, shame or humiliation to a person of ordinary sensibilities.

In Industrial Foundation of the South v. Texas Industrial Accident Board, 540 S.W.2d 668, 682-83 (Tex. 1976), the court stated:

[T]he tort 'invasion of privacy' is actually a recognition of several 'privacy interests' considered to be deserving of protection. Professor William L. Prosser has categorized these interests into four distinct torts, each subject to different rules:

1. Intrusion upon the plaintiff's seclusion or solitude, or into his private affairs;
2. Public disclosure of embarrassing private facts about the plaintiff;
3. Publicity which places the plaintiff in a false light in the public eye;
4. Appropriation, for the defendant's advantage, of the plaintiff's name or likeness.

William L. Prosser, Privacy, 48 Cal. L. Rev. 383, 389 (1960).

. . . .

We recognized in Billings, supra, that an individual has the right to be free from 'the publicizing of one's private affairs with which the public has no legitimate concern,' but the precise requirements for showing an invasion of this particular right of privacy have not yet been defined by the courts of this State. It is generally recognized, however, that an injured

party, in order to recover for public disclosure of private facts about himself, must show (1) that publicity was given to matters concerning his private life, (2) the publication of which would be highly offensive to a reasonable person of ordinary sensibilities, and (3) that the matter publicized is not of legitimate public concern.

You have claimed that privacy interests protect the identities of debtors. Not all of the city's 1,600 utility customers will be "debtors" in the sense that they will be delinquent in their utility payments; a few, however, likely will be. The following statement about the privacy implications of the public disclosure of a person's indebtedness appears at 33 A.L.R. 3d 156, 162-63 (1970):

A cause of action for invasion of privacy has been recognized where the creditor published in a newspaper the debtor's name and the amount of his indebtedness.

In Trammell v. Citizens News Co. (1941), 285 Ky. 529, 148 S.W.2d 708, a notice published in a newspaper stated that plaintiff owed defendant creditor a certain amount on a grocery account, and requested plaintiff to let the creditor know if there was any error, and if not, to make arrangements for a settlement. Prior to publication, plaintiff had received a threat from the creditor to publish the notice if the account was not paid, and plaintiff had requested the editor of the newspaper not to publish the notice. The court held that notwithstanding the fact that plaintiff admitted owing the amount mentioned in the notice and that the publisher of the newspaper was not interested in coercing payment of the debt, both the publisher and the creditor were liable to the plaintiff on the ground that the publication amounted to an invasion of the plaintiff's right of privacy. The court pointed out that the contents of the notice were not matters of public interest, but concerned only the creditor and the debtor, and that the publisher of the notice necessarily knew that its publication would tend to expose the plaintiff to public contempt, ridicule, or disgrace.

The debt to which the Trammell case referred, however, was a purely private one involving only the debtor and the creditor. This prompted the court's conclusion that "the contents of the notice were not matters of public interest, but concerned only the creditor and the debtor." In this instance, by contrast, anyone who is delinquent in his utility payments to the city of Electra owes a debt to a

governmental entity rather than to a private party. Although the public may have no legitimate interest in private debts, we believe that it has a genuine interest in knowing who owes money to the city, as this information will enable the public to gain some insight into the manner in which the city handles the task of revenue collection and may spur the public to attempt to influence city officials to perform that task differently. We also note that the people requesting access to this information stated, in a letter to this office, that "[w]e have reasons to suspect fraud in the maintenance (manipulation) of certain public records, particularly certain utility accounts." This shows that there is a heightened public interest in these particular utility bills.

The Industrial Foundation case held that information may be withheld on privacy grounds only if it is both highly intimate or embarrassing and of no legitimate concern to the public. To the extent that the disclosure of the city's utility bills would indicate who does not owe money to the city, such disclosure would not reveal "highly intimate or embarrassing" information; since this is so, it is unnecessary to reach the question whether the public would have a legitimate interest in that information. To the extent that such disclosure would reveal who is, or has been, delinquent in their utility payments, we conclude, for the reasons expressed above, that even if this information can be characterized as "highly intimate or embarrassing," the public does have a legitimate interest in it. In this regard, we note that section 6(3) of the Open Records Act expresses a strong legislative policy favoring the disclosure of "information in any account, voucher, or contract dealing with the receipt or expenditure of public or other funds by governmental bodies." See also Open Records Decision No. 385 (1983).

Industrial Foundation held that privacy interests protect against "intrusion[s] upon [a person's] seclusion or solitude, or into his private affairs" and against the "public disclosure of embarrassing private facts about the [person]." (Emphasis added). A debt owed to a governmental entity, which is a matter of concern to everyone within that entity, cannot, in our view, be characterized as a part of one's "private" affairs. Moreover, because the privacy test articulated in Industrial Foundation protects information only if it is of no legitimate concern to the public, we conclude that privacy interests are not at stake here. You have not raised any other exceptions. The city, therefore, must release the requested information.

Very truly yours



J I M M A T T O X

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