



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 24, 2013

Mr. Frank J. Garza
Law Offices of Davidson Troilo Ream & Garza, P.C.
7550 West Interstate 10, Suite 800
San Antonio, Texas 78229-5815

OR2013-12762

Dear Mr. Garza:

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# 494121.

The Brownsville Public Utilities Board (the "board"), which you represent, received a request for certain water and power service information for two named individuals at a specified address. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.133 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have submitted information that falls outside the scope of the request. Therefore, this information, which we have marked, is not responsive to the present request. The board need not release non-responsive information in response to the request, and this ruling will not address that information.

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 of the Government Code provides in relevant part:

- (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)(F). Section 552.133(a-1)(2) provides fifteen categories of information that are not competitive matters. *Id.* § 552.133(a-1)(2).

You inform us the board is a public power utility for purposes of section 552.133. You further inform us the responsive information pertains to utility customers. Based on our review of your arguments and the information at issue, we find the responsive electric billing information, which we have marked, relates to a competitive matter as defined under section 552.133(a-1). We note this information is not among the fifteen categories of information section 552.133(a-1)(2) expressly excludes from the definition of a “competitive matter.” *Id.* Thus, we conclude the information we have marked is excepted from disclosure under section 552.133 of the Government Code and must be withheld on this basis.¹ However, we note the remaining information pertains to water service. We find the board has failed to demonstrate the applicability of section 552.133 to this information, and the board may not withhold it on the basis of section 552.133 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses information that other statutes make confidential, such as section 182.052 of the Utilities Code. This section 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

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure for this information.

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. *See id.* § 182.051(4); *see also* Open Records Decision No. 625 (1994) (construing statutory predecessor). Water service is included in the scope of utility services covered by section 182.052. *See* 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 raise section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code for the remaining responsive information. You inform us the information at issue pertains to a utility customer that has elected to keep her personal information protected. We note the customer's election form, which you have provided to our office, reflects this customer timely requested confidentiality under section 182.052 for her personal information. You state none of the exceptions to confidentiality under section 182.054 apply in this instance. Based on your representations and our review, we find the board must withhold the address we have marked under section 552.101 of the Government Code in conjunction with section 182.052(a). However, none of the remaining information consists of personal information subject to section 182.052 and none of it may be withheld under section 552.101 on that basis.

Section 552.136(b) of the Government Code 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."² Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). Therefore, the board must withhold the billing account numbers we have marked under section 552.136 of the Government Code.

In summary, the board must withhold (1) the information we have marked under section 552.133 of the Government Code; (2) the address we have marked under section 552.101 of the Government Code in conjunction with section 182.052(a) of the

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Utilities Code; and (3) the billing account numbers we have marked under section 552.136 of the Government Code. The remaining responsive information must be released.³

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,



Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/som

Ref: ID# 494121

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the information to be released contains the requestor's billing account number, which the board would be required to withhold from the general public under section 552.136 of the Government Code. However, the requestor has a right of access to that information under section 552.023 of the Government Code. See Gov't Code § 552.023(a); ORD 481 at 4 (privacy theories not implicated when individual requests information concerning himself). We note section 552.136(c) of the Government Code authorizes a governmental body to redact access device numbers subject to section 552.136(b) without requesting a decision. See Gov't Code § 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 notice to requestor). Thus, should the board receive another request for this same information from a different requestor, section 552.136(c) authorizes the board to withhold information encompassed by section 552.136 without the necessity of requesting another decision.