



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 8, 2014

Ms. Kasey Feldman-Thomason
General Law Attorney
Public Utility Commission of Texas
P.O. Box 13326
Austin, Texas 78711

OR2014-05799

Dear Ms. Feldman-Thomason:

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# 519130.

The Public Utility Commission (the "commission") received two requests for information pertaining to complaints levied by customers against specified energy providers within specified time frames. You state you have released some information to the requestors. You claim portions of the remaining requested information are excepted from disclosure under sections 552.101 and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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. This section encompasses information protected by section 17.004 of the Utilities Code. Section 17.004 provides in part that "[a]ll buyers of telecommunications and retail electric services are entitled to . . . privacy of customer consumption and credit information[.]" Util. Code § 17.004(a)(6). Upon review, we agree the information you marked consists of individual customers' electric consumption and credit information for purposes of section 17.004. Accordingly, the portions you have marked under section 17.004 of the Utilities Code are confidential, and must be withheld pursuant to section 552.101 of the Government Code.

Section 552.101 also encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) 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. *See id.* at 681–82. The types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation. Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). This office has also found that personal financial information not related to a financial transaction between an individual and a governmental body is highly intimate or embarrassing and of no legitimate public interest. *See* Open Records Decision Nos. 545 (1990) (assets, bills, and credit history protected under common-law privacy), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Upon review, we find portions of the information you have marked, in addition to the information we have marked, satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, we find the remaining information you have marked is not highly intimate and embarrassing or is of legitimate concern to the public, and, therefore, you may not withhold any remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. Accordingly, with the exception of the information we have marked for released, the commission must withhold the information you have marked, as well as the additional information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.136 of the Government Code provides, in pertinent part:

(a) In this section, “access device” means 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:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, 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(a)-(b). We understand an electricity service identifier (“ESI”) number identifies an electric service location and can be used in combination with a meter number to gain access to a meter at the electric service location. Upon review, we conclude the commission must withhold the utility account numbers, ESI numbers, and meter numbers you have marked pursuant to section 552.136 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with

a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c).¹ *See id.* § 552.137(a)-(c). The e-mail address at issue is not excluded by subsection (c). Therefore, the commission must withhold the personal e-mail address we marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.²

In summary, the commission must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 17.004 of the Utilities Code. With the exception of the information we have marked for released, the commission must withhold the information you have marked, as well as the additional information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. The commission must withhold the information you marked under section 552.136 of the Government Code. The commission must withhold the information we marked under section 552.137 of the Government Code. The remaining information must be released.

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,



Joseph Behnke
Assistant Attorney General
Open Records Division

JB/som

¹The 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).

²Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including e-mail addresses of members of the public under section 552.137, without the necessity of requesting an attorney general decision.

Ref: ID# 519071

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)