



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 8, 2014

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

OR2014-07822

Dear Ms. 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# 522456.

The Public Utility Commission of Texas (the "commission") received a request for twenty specified complaints against a named company.¹ You state you have released most of the responsive information. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.136, and 552.137 of the Government Code. You also inform us you notified interested utility customers of the request for information and their right to submit comments to this office. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). 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." *Id.*

¹You state the commission sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

§ 552.101. Section 552.101 encompasses section 17.004 of the Utilities Code, which 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). “Customer” means “any person in whose name telephone or retail electric service is billed, including individuals, governmental units at all levels of government, corporate entities, and any other entity with legal capacity to be billed for telephone or retail electric service.” *Id.* § 17.002(4). Upon review, we find the types of information we have indicated consist of customers’ electric consumption and credit information for purposes of section 17.004. Accordingly, the commission must withhold the types of information we have indicated under section 552.101 of the Government Code in conjunction with section 17.004 of the Utilities Code. However, we find you have failed to demonstrate how any of the remaining information at issue reveals a customer’s electric consumption or credit information. Therefore, none of the remaining information may be withheld under section 552.101 on this basis.

Section 552.101 of the Government Code also encompasses the doctrine of 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 established. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has also 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. 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). Upon review, we find the types of information we have marked satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the commission must withhold the types of information we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find none of the remaining information is highly intimate or embarrassing and of no legitimate public concern. Accordingly, the commission may not withhold any of the remaining information under section 552.101 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). You seek to withhold electric service account numbers and an answer to a security question under section 552.136. You state the account numbers and the answer to the security question can be used to gain access to a customer's electric account and obtain services under another individual's account without paying for the service. Upon review, we conclude the account numbers you seek to withhold, as well as the answer to the security question, are subject to section 552.136 of the Government Code. Therefore, the commission must withhold the information you seek to withhold under section 552.136 of the Government Code. Additionally, you state both of the submitted audio files contain information subject to section 552.136. Upon review, we find the submitted audio file labeled "CP2014020278_1402006559" contains information subject to section 552.136. You claim the commission lacks the technological capability to redact the information at issue from the audio recording. However, because the commission had the ability to copy the submitted audio recording in order to submit the requested information for our review, we believe the commission has the capability to produce a copy of only the non-confidential portions of the submitted audio recording. Therefore, we find the commission must withhold only the account number and the answer to the security question contained in the audio file labeled "CP2014020278_1402006559" under section 552.136.

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). *See id.* § 552.137(a)-(c). The e-mail addresses at issue are not of a type excluded by subsection (c). Therefore, the commission must withhold the e-mail addresses you have marked, in addition to the e-mail address we marked, under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their public disclosure.

In summary, the commission must withhold the types of information we have indicated under section 552.101 of the Government Code in conjunction with section 17.004 of the Utilities Code. Additionally, the commission must withhold the types of information we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy. The commission also must withhold the account numbers and the answer to the security question you seek to withhold under section 552.136 of the Government Code.

Finally, the commission must withhold the marked email addresses 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,



Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/tch

Ref: ID# 522456

Enc. Submitted documents

c: Requestor
(w/o enclosures)