



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 22, 2014

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

OR2014-06521

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# 520281 (PUC ID# 2014-01-014).

The Public Utility Commission of Texas (the "commission") received a request for all items received by the commission from Pedernales Electric Cooperative, Inc. ("Pedernales"), for a specified period of time.<sup>1</sup> You state the commission will release some of the requested information upon receipt of production costs. You claim some of the submitted information is exempted from disclosure under sections 552.101, 552.136, and 552.137 of the Government Code. Further, you state release of this information may implicate the proprietary interests of Pedernales. Accordingly, you state, and provide documentation showing, you notified Pedernales of the request for information and of its right to submit

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<sup>1</sup>You 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 overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). Additionally, you 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 reviewed the submitted information and the submitted arguments.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) of the Government Code to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Pedernales explaining why its information should not be released. Therefore, we have no basis to conclude Pedernales has a protected proprietary interest in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of the requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret). Accordingly, the commission may not withhold the submitted information on the basis of any proprietary interest Pedernales may have in it.

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 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 information we have marked consists of customers' electronic consumption and credit information for purposes of section 17.004. Accordingly, the commission must withhold the information we have marked 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 electronic consumption or credit information. Therefore, the commission may not withhold any of the remaining information 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 information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the commission must withhold the information we have marked 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 meter numbers under section 552.136. You state the account numbers and meter numbers at issue 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 commission must withhold the electric service account numbers and meter numbers you and we have marked under section 552.136 of the Government Code.

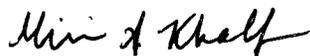
Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *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 under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their public disclosure.<sup>2</sup>

In summary, the commission must withhold the following: (1) the information we have marked under section 552.101 of the Government Code in conjunction with section 17.004 of the Utilities Code; (2) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (3) the electric service account numbers and meter numbers you and we have marked under section 552.136 of the Government Code; and (4) the e-mail addresses you have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their public disclosure. The commission must release the remaining information.

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](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,



Miriam A. Khalifa  
Assistant Attorney General  
Open Records Division

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<sup>2</sup>We note Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

Ref: ID# 520281

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Sylvia Romero  
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Johnson City, Texas 78636  
(w/o enclosures)