



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 17, 2014

Ms. Hilda Salinas
Public Information Specialist
Public Affairs Division
County of Hidalgo
302 West University Drive
Edinburg, Texas 78539

OR2014-18685

Dear Ms. Salinas:

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# 540131 (Hidalgo ID# 2014-446).

The Hidalgo County Public Affairs Division (the "division") received a request for all ESIDs currently being served by the current electricity provider for Hidalgo County, as well as the addresses associated with those ESIDs. Although you take no position as to whether the requested information is excepted under the Act, you state release of this information may implicate the proprietary interests of Reliant Energy Retail Services, LLC ("Reliant"). Accordingly, you state, and provide documentation showing, you notified Reliant of the request for information and of its right to submit arguments to this office as to why the requested information should not be released. *See Gov't Code § 552.305(d); 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). We have reviewed the submitted representative sample of information.¹

¹ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

You inform us the division inadvertently released some of the requested information to the requestor. The Act does not permit the selective disclosure of information. *See* Gov't Code §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). If information has been voluntarily released to any member of the public, then that same information may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, the division may not withhold previously released information unless its release is expressly prohibited by law or the information is confidential by law. In this instance, however, the division has not taken any position regarding the public availability of the information at issue, but rather has determined Reliant's interests may be implicated. When a third party's proprietary interests are at issue, section 552.305(d) of the Government Code requires a governmental body to notify the third party of its right to submit comments to this office explaining why its information should be withheld from disclosure. *See* Gov't Code § 552.305(d). As a third-party's proprietary interests may result in the information being confidential by law, we will consider whether any of the information must be withheld on that basis.

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) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Reliant explaining why its information should not be released. Therefore, we have no basis to conclude Reliant has a protected proprietary interest in the requested 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 requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the division may not withhold any of the information at issue on the basis of any proprietary interest Reliant may have in it.

The submitted information contains account numbers subject to Section 552.136 of the Government Code.² Section 552.136 provides in part that “[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.” Gov't Code § 552.136(b). Section 552.136(a) defines “access device” as “a card, plate, code, account number, personal identification number, electronic serial number, mobile

² The 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).

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 ... obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* § 552.136(a). Accordingly, the division must withhold the customer account numbers under section 552.136 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



Brian E. Berger
Assistant Attorney General
Open Records Division

BB/eb

Ref: ID# 540131

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Claire Doyle
Reliant Energy
NRGTower
1201 Fannin
Houston, Texas 77002
(w/o enclosures)