



January 14, 2015

Ms. Tameka Harris  
Legal Assistant  
Public Utility Commission of Texas  
P.O. Box 13326  
Austin, Texas 78711

OR2015-00782

Dear Ms. Harris:

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# 548221.

The Public Utility Commission of Texas (the "commission") received a request for all outage reports filed with the commission during a specified time period. You state the commission has released some information to the requestor. You state the commission will redact personal e-mail addresses subject to section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).<sup>1</sup> You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. Although you take no position as to whether the remaining requested information is excepted from disclosure, you state its release may implicate the interests of certain third parties, namely: AEP Texas Central Company; AEP Texas North Company; AT&T Texas ("AT&T"); Brenham Municipal Light & Power System; Central Texas Telephone Cooperative, Inc.; Hill Country Telephone Cooperative, Inc.; Oncor Electric Delivery Company; Sharyland Utilities LP - McAllen; Texas-New Mexico Power Company ("TNMP"); and Valley Telephone Cooperative, Inc. Accordingly, you state, and provide documentation demonstrating, the commission notified these third parties of the request for information and of their right to submit arguments stating why their information should not

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<sup>1</sup>Open Records Decision No. 684 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 of the Government Code, without the necessity of requesting an attorney general decision.

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); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have received comments from AT&T and TNMP. We have considered the submitted arguments and reviewed the submitted information.

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 requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, this office has only received comments from AT&T and TNMP explaining why their information should not be released to the requestor. Thus, we have no basis to conclude any of the remaining third parties have a protected proprietary interest in the information at issue. *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 commission may not withhold the information at issue based on any proprietary interest the remaining third parties 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. This section encompasses information protected by other statutes. As part of the Texas Homeland Security Act ("HSA"), sections 418.176 through 418.182 were added to chapter 418 of the Government Code. These provisions make certain information related to terrorism confidential. The commission asserts the information it marked is confidential under section 418.181 of the Government Code, which provides "[t]hose documents or portions of documents in the possession of a governmental entity are confidential if they identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism." *Id.* § 418.181. The fact that information may relate to a governmental body's security concerns does not make the information *per se* confidential under the HSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute's key terms is not sufficient to demonstrate the applicability of the claimed provision. As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions of the HSA must adequately explain how the responsive records fall within the scope of the claimed provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

The commission contends, and we agree, the electrical transmission lines, substations, and feeders at issue are critical infrastructure. *See id.* § 421.001 (defining "critical infrastructure"

to include “all public or private assets, systems, and functions vital to the security, governance, public health and safety, economy, or morale of the state or the nation”). The commission explains the information at issue includes the specific locations of “facilities, feeders, and/or substations involved in specific outages.” The commission argues the release of this information “would allow a would-be terrorist to pinpoint locations where damaging equipment could effectively cause widespread failure of critical electrical infrastructure.” Based on these arguments and our review of the information at issue, we find the commission has demonstrated release of the information at issue would identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Therefore, the commission must withhold the information it marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.<sup>2</sup>

Next, AT&T argues its information at issue is confidential by law and must be withheld under section 552.101 of the Government Code. As previously noted, section 552.101 encompasses information that is considered to be confidential under other law. *See* Open Records Decision Nos. 611 at 1 (1992) (common-law privacy) 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality). However, AT&T has failed to direct our attention to any specific law, nor are we aware of any such law, under which any of its remaining information is considered to be confidential for purposes of section 552.101. Therefore, the commission may not withhold any of AT&T’s remaining information under section 552.101 of the Government Code.

AT&T also argues its information is excepted from disclosure under section 552.104 of the Government Code. Section 552.104 excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104. We note, however, section 552.104 only protects the interests of a governmental body and does not protect the interests of a third party; therefore, we will not consider AT&T’s claim under section 552.104. *See* Open Records Decision No. 592 at 9 (1991) (statutory predecessor to section 552.104 designed to protect interests of governmental body in competitive bidding situation, and not interests of private parties submitting information to government).

AT&T also asserts its information consists of protected commercial and financial information under section 552.110(b) of the Government Code. Section 552.110(b) protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov’t Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* ORD 661 at 5-6.

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<sup>2</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

Upon review, we find AT&T has not made the specific factual or evidentiary showing required by section 552.110(b) that release of any of the remaining information at issue would cause the company substantial competitive harm. *See* ORD 661, 319 at 3 (1982). Thus, we conclude the commission may not withhold any of AT&T's remaining information under section 552.110(b) of the Government Code.

TNMP raises section 552.133 of the Government Code, which excepts from disclosure a public power utility's information that is "reasonably related to a competitive matter." *See* Gov't Code § 552.133(b). Section 552.133 only protects the competitive interest of a public power utility. This exception does not protect the interests of third parties, such as TNMP. *See* Open Records Decision No. 666 at 2 (2000) (statutory predecessor to section 552.133 enacted to protect municipally owned utilities from public disclosure of competitive matters). We note the commission has not raised section 552.133 of the Government Code. Thus, we find TNMP has failed to demonstrate the applicability of section 552.133 to its information, and the commission may not withhold TNMP's information on that basis.

We understand TNMP further asserts portions of its information are protected by section 25.272(g)(1) of title 16 of the Texas Administrative Code, which provides for the protection of proprietary customer information of a utility in certain circumstances. *See* 16 T.A.C. § 25.272(g)(1). Section 25.272(c)(5) of title 16 of the Texas Administrative Code defines "proprietary customer information" in part as

[a]ny information compiled by an electric utility on a customer in the normal course of providing electric service that makes possible the identification of any individual customer by matching such information with the customer's name, address, account number, type or classification of service, historical electricity usage, expected patterns of use, types of facilities used in providing service, individual contract terms and conditions, price, current charges, billing records, or any other information that the customer has expressly requested not be disclosed.

*Id.* § 25.272(c)(5). However, we note section 25.272(c)(5) further provides "[i]nformation that is redacted or organized in such a way as to make it impossible to identify the customer to whom the information relates does not constitute proprietary customer information." *Id.* Upon review, we find TNMP has not demonstrated its aggregated customer information at issue makes it possible to identify any customer to which the information relates. Further, TNMP has not demonstrated its remaining information at issue, which is not aggregated customer information, consists of proprietary customer information for purposes of section 25.272(c)(5). Therefore, the commission may not withhold any of TNMP's information under section 552.101 of the Government Code on the basis of section 25.272(g)(1) of title 16 of the Texas Administrative Code.

Next, TNMP generally asserts portions of its information are confidential under section 25.272(c)(3) of title 16 of the Texas Administrative Code. Section 25.272(c)(3) of title 16 of the Texas Administrative Code defines “confidential information” as

[a]ny information not intended for public disclosure and considered to be confidential or proprietary by persons privy to such information. Confidential information includes but is not limited to information relating to the interconnection of customers to a utility's transmission or distribution systems, proprietary customer information, trade secrets, competitive information relating to internal manufacturing processes, and information about a utility's transmission or distribution system, operations, or plans for expansion.

*Id.* § 25.272(c)(3). Accordingly, while section 25.272(c)(3) defines confidential information for purposes of section 25.272, it is not a provision under which information is made expressly confidential. *See id.* § 25.272(c)(3). Although TNMP does not point to such provisions, we note portions of sections 25.272(d) and 25.272(e) limit the transfer of “confidential information” in certain situations. *See id.* §§ 25.272(d)(2-4), (7) (pertaining to the separation of a utility from its competitive affiliates), 25.272(e)(2) (addressing transactions between a utility and its competitive affiliates). Upon review, we find TNMP has not demonstrated how its remaining information at issue, which relates to outage reports TNMP states were provided to the commission pursuant to section 25.52 of title 16 of the Texas Administrative Code, is confidential for purposes of section 25.272(d) or section 25.272(e)(2) of title 16 of the Texas Administrative Code. Therefore, the commission may not withhold TNMP’s remaining information at issue section 552.101 of the Government Code on either of those bases.

Finally, TNMP asserts portions of its information are excepted from disclosure under section 552.101 of the Government Code in conjunction with section 39.1511(a) of the Utilities Code, which provides:

(a) Meetings of the governing body of an independent organization certified under Section 39.151 and meetings of a subcommittee that includes a member of the governing body must be open to the public. The bylaws of the independent organization and the rules of the commission may provide for the governing body or subcommittee to enter into executive session closed to the public to address sensitive matters such as confidential personnel information, contracts, lawsuits, competitively sensitive information, or other information related to the security of the regional electric network.

Util. Code § 39.1511(a). For information to be confidential under section 552.101, a statute must explicitly require confidentiality; confidentiality will not be inferred. *See* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express and confidentiality requirement will not be implied from statutory structure), 478 at 2 (1987) (as

general rule, statutory confidentiality requires express language making information confidential), 465 at 4-5 (1987). We find section 39.1511(a) of the Utilities Code does not expressly provide for the confidentiality of information. Thus, the commission may not withhold TNMP's remaining information under section 552.101 of the Government Code on that basis.

In summary, the commission must withhold the information it marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. 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,



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Assistant Attorney General  
Open Records Division

CLS/som

Ref: ID# 548221

Enc. Submitted documents

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