



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 15, 2015

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

OR2015-26334

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# 590823 (PUCT ID# 2015-09-023).

The Public Utility Commission of Texas (the "commission") received a request for any complaints, financial reports, regulatory actions, or communications with four named companies during a specified time period.¹ You state the commission has provided some information to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.136, and 552.137 of the Government Code. Additionally, you state release of some of the submitted information may implicate the proprietary interests of Agera Energy LLC ("Agera") and Glacial Energy of Texas, Inc. ("Glacial"). Accordingly, you state you notified Agera and Glacial of the request for information and of their rights to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d), .304 (interested party may submit comments stating why information should or 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). We have received comments from Agera. We have considered the submitted arguments and reviewed the submitted information.

¹We note the governmental body sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing 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) (if 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).

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 Glacial explaining why the submitted information should not be released. Therefore, we have no basis to conclude Glacial has protected proprietary interests 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 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 submitted information on the basis of any proprietary interest Glacial may have in the 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 information you have marked under section 17.004 of the Utilities Code is confidential, and must be withheld pursuant to section 552.101 of the Government Code.

Agera informs us some of its information at issue was submitted to the commission pursuant to the procedures of section 22.71(d) of title 16 of the Texas Administrative Code. We note that section 22.71 does not expressly make information confidential; instead, it provides the procedures for how information submitted to the commission should be designated and labeled by parties and how the commission should maintain that information internally. *See* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality must be express, and confidentiality requirement will not be implied from statutory structure), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to the public); *see also Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976) (governmental agency may not bring information within scope of statutory predecessor to section 552.101 by promulgation of rule; to imply such authority merely from general rule-making powers would be to allow agency to circumvent very purpose of the Act). Neither the commission nor Agera has cited to any specific law, and we are not aware of any, that makes the information at issue confidential under section 552.101; therefore, the commission may not withhold the information at issue under section 552.101.

Agera also asserts some of 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.

Upon review, we find Agera has not made the specific factual or evidentiary showing required by section 552.110(b) that release of any of the 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 Agera’s remaining information under section 552.110(b) of the Government Code.

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 under section 552.136. You state the account numbers 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 account numbers we have indicated, are subject to section 552.136 of the Government Code. Therefore, the commission must withhold the information you have marked, and we have indicated, 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.

In summary, the commission must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 17.004 of the Utilities Code. The commission must withhold the information you have marked, and we have indicated, under section 552.136 of the Government Code. 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. The remaining submitted 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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/dls

Ref: ID# 590823

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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