



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 23, 2019

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

OR2019-10684

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# 758560 (PUC ID No. 2019-01-011).

The Public Utility Commission of Texas (the "commission") received a request for consumer complaints filed with the commission against specified energy providers for a period of time. You state you have released some information. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.136, and 552.137 of the Government Code. 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." 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). Upon review, we find the information you marked and the additional information we marked consists of customers' electric consumption and credit information for purposes of section 17.004. Accordingly, the commission must withhold the information you marked and we marked under section 17.004 of the Utilities Code in conjunction with section 552.101 of the Government Code.

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 satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). This office has 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 marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the commission must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the remaining information pertains to individuals who are de-identified and whose privacy interests are, thus, protected. Accordingly, we find the remaining information is not highly intimate or embarrassing information or is of legitimate public interest. Therefore, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release.¹ *See* Gov't Code § 552.130(a). Accordingly, the commission must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides, “[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.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). We understand an electricity service identifier (“ESI”) number identifies an electric service location and can be used in combination with a meter number to gain access to a meter at the electric service location. Upon review, the commission must withhold the ESI number you marked under section 552.136 of the Government Code.

¹The 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).

Section 552.137 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). Section 552.137 does not apply to an institutional e-mail address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, an e-mail address of a vendor who seeks to contract with a governmental body, an e-mail address maintained by a governmental entity for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. *See id.* § 552.137(c). Upon review, the commission must withhold the e-mail addresses you marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure or subsection (c) applies.

In summary, the commission must withhold the information you marked and we marked under section 17.004 of the Utilities Code in conjunction with section 552.101 of the Government Code. The commission must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The commission must withhold the ESI number you marked under section 552.136 of the Government Code. The commission must withhold the e-mail addresses you marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure or subsection (c) applies. 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, 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,

A handwritten signature in black ink, appearing to read "D. Michelle Case", followed by a long, horizontal, wavy flourish.

D. Michelle Case
Assistant Attorney General
Open Records Division

DMC/sb

Ref: ID# 758560

Enc. Submitted documents

c: Requestor
(w/o enclosures)