



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 16, 2022

Mr. Frank J. Garza
Counsel for the Brownsville Public Utilities Board
Davidson, Troilo, Ream & Garza, P.C.
601 Northwest Loop 410, Suite 100
San Antonio, Texas 78126-5511

OR2022-39258

Dear Mr. Garza:

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# 991481.

The Brownsville Public Utilities Board (the "board"), which you represent, received a request for billing information pertaining to specified officials during a specified time period.¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.133 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

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 182.052 of the Utilities Code, which provides, in part, as follows:

¹ We note the board asked for and received clarification regarding this request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *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 over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

² We assume 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.

(a) Except as provided by Section 182.054, a government-operated utility may not disclose personal information in a customer's account record, or any information relating to the volume or units of utility usage or the amounts billed to or collected from the individual for utility usage, unless the customer requests that the government-operated utility disclose the information.

(b) A customer may request disclosure of information described by Subsection (a) by delivering to the government-operated utility an appropriately marked form provided under Subsection (c)(2) or any other written request for disclosure.

Util. Code § 182.052(a)-(b). "Personal information" under section 182.052(a) means an individual's address, telephone number, and social security number, but does not include the individual's name. *See id.* § 182.051(4); *see also* Open Records Decision No. 625 (1994) (construing statutory predecessor). Water, wastewater, sewer, gas, garbage, electricity, and drainage services are included in the scope of utility services covered by section 182.052. *See* Util. Code § 182.051(3). Section 182.054 of the Utilities Code provides six exceptions to the disclosure prohibition found in section 182.052. *See id.* § 182.054.

We understand the board is a government-operated utility for purposes of section 182.052. *See id.* § 182.051(3) (providing a "government-operated utility" is a governmental body or entity that, for compensation, provides water, wastewater, sewer, gas, garbage, electricity, or drainage service). Upon review, we find some of the information at issue contains personal information of utility customers. We understand the customers whose information is at issue did not request that the board disclose their information under section 182.052 of the Utility Code. Accordingly, the board must withhold the types of information we have marked under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code.³ However, upon review, we find the remaining information is not confidential under section 182.052 and may not be withheld under section 552.101 of the Government Code on that basis.

Section 552.133 of the Government Code excepts from disclosure a public power utility's information that is "reasonably related to a competitive matter." Gov't Code § 552.133(b). Section 552.133 provides in relevant part:

(a) In this section, "public power utility" means an entity providing electric or gas utility services that is subject to the provisions of this chapter.

(a-1) For purposes of this section, "competitive matter" means a utility-related matter that is related to the public power utility's competitive activity, including commercial information, and would, if disclosed, give advantage to competitors or prospective competitors. The term:

³ As our ruling on this information is dispositive, we need not address your remaining argument against its disclosure.

(1) means a matter that is reasonably related to the following categories of information:

...

(F) customer billing, contract, and usage information, electric power pricing information, system load characteristics, and electric power marketing analyses and strategies[.]

Id. § 552.133(a), (a-1)(1)(F). Section 552.133(a-1)(2) provides fifteen categories of information that are not competitive matters. *Id.* § 552.133(a-1)(2). The board states it is a public power utility for purposes of section 552.133. The board asserts the remaining information pertains to its usage and electric power pricing information. The board also asserts the information is not among the fifteen categories of information expressly excluded from the definition of “competitive matter” by section 552.133(a-1)(2). Upon review, we find some of the information at issue relates to competitive matters as defined by section 552.133(a-1). Therefore, the board must withhold the submitted electrical information, a representative sample of which we marked, under section 552.133 of the Government Code. However, we find the board has not established the remaining information relates to a competitive matter as defined by section 552.133(a-1). Section 552.133 applies to electric or gas utility services only. *Id.* § 552.133(a). Thus, the board may not withhold the remaining information on that basis.

Section 552.136(b) 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.”⁴ *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Accordingly, the board must withhold the submitted utility account numbers under section 552.136 of the Government Code.

In summary, the board must withhold the types of information we have marked under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code. The board must withhold the submitted electrical information, a representative sample of which we marked, under section 552.133 of the Government Code. The board must withhold the submitted utility account numbers under section 552.136 of the Government Code. The board 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.

⁴ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/pt

Ref: ID# Frank J. Garza

Enc. Submitted documents

c: Requestor
(w/o enclosures)