



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

December 2, 1993

Honorable Kenny Marchant
Chair
Committee on Investments
and Banking
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Letter Opinion No. 93-108

Re: Whether House Bill 859, Acts 1993, 73d Leg., ch. 473, prohibits the release of utility customer information to a person or entity engaged in the business of welcoming newcomers to the city and related questions (ID #22454)

Dear Representative Marchant:

You have requested an opinion from this office regarding the construction of House Bill 859, Acts 1993, 73d Leg., chapter 473, Vernon's Sess. Law Serv. 1866. You want to know if House Bill 859 prevents a city from disclosing "personal information"¹ from a customer's utility records to a person or entity that welcomes newcomers to the city when the customer requests confidentiality under the act. In particular, you inquire about the effect of House Bill 859 when the person or entity is and is not affiliated with the city and when the city contracts with the person or entity to provide welcoming services. You also ask whether a city can include a box on the form it provides its customers that can be checked to authorize disclosure of personal information to a welcoming service or other particular organization while requesting that the information be kept otherwise confidential.

Your first question essentially asks this office to determine whether a person or entity that welcomes newcomers to a city falls within any of the exceptions contained in House Bill 859. Except as provided under section 5 of the act, House Bill 859 prohibits a "government-operated utility" from disclosing a customer's address, telephone number, or social security number if the customer requests that this information be kept confidential. Acts 1993, 73d Leg., ch. 473, § 2, Vernon's Sess. Law Serv. 1867. A city that provides water, wastewater, sewer, gas, garbage, electricity, or drainage service for compensation is a government-operated utility. *See id.* § 1, at 1866. Section 5 of the act provides:

This Act does not prohibit a government-operated utility from disclosing personal information in a customer's account records to:

¹House Bill 859 defines "personal information" as a customer's address, telephone number, and social security number. Acts 1993, 73d Leg., ch. 473, § 1(1), Vernon's Sess. Law Serv. 1866, 1867.

- (1) an official or employee of the state or a political subdivision of the state, or the federal government acting in an official capacity;
- (2) an employee of a utility acting in connection with the employee's duties;
- (3) a consumer reporting agency;
- (4) a contractor or sub-contractor approved by and providing services to the utility or to the state, a political subdivision of the state, the federal government, or an agency of the state or federal government;
- (5) a person for whom the customer has contractually waived confidentiality for personal information; or
- (6) another entity that provides water, wastewater, sewer, gas, garbage, electricity, or drainage service for compensation.

We conclude that a city may not release personal information to an entity that welcomes newcomers to the city when a customer requests confidentiality and the person or entity is not affiliated with the city. Under these circumstances, the person or entity that welcomes newcomers to the city does not fall within any of the exceptions listed in section 5. Furthermore, whether the entity is a non-profit organization or serves as a referral service for businesses that have paid a fee does not matter; being a non-profit organization would not, by itself, bring any organization within one of the exceptions.

We are unable to determine, however, whether an entity that provides newcomer welcoming services would fall within any of the exceptions contained in section 5 if the city contracted with the entity to provide services or if the entity were otherwise affiliated with the city. Whether an entity that contracts with a city is "a contractor . . . providing services to" the city depends on the nature of the services the entity is required to provide under the contract and the terms of the contract. Thus, making this determination would require this office to construe a contract, and this office cannot construe contracts. Attorney General Opinion DM-192 (1992) at 10. Similarly, whether an entity otherwise affiliated with a city falls within any of the exceptions depends on whether the entity's employees could be considered employees of the city or whether the entity could be considered a contractor providing services to the city. Making these determinations requires the resolution of factual questions and, therefore, is not amenable to the opinion process. Attorney General Opinion DM-212 (1993) at 2.

In response to your second question, we conclude that a government-operated utility is permitted to include a box on the form it provides its customers that can be checked to authorize disclosure of personal information to a welcoming service or other particular organization while requesting that the information be kept otherwise confidential. Nothing in House Bill 859 specifically prevents a government-operated

utility from asking its customers if they want information kept confidential from some organizations but not from others. Furthermore, section 5(5) indicates that the legislature intended to allow customers to authorize the disclosure of information to some people or entities but not to others. Section 5(5) provides that House Bill 859 does not prevent a government-operated utility from disclosing personal information to "a person for whom the customer has contractually waived confidentiality for personal information." We do not believe that the legislature could have intended this provision to apply solely to situations in which a particular person or entity requests authorization to obtain information about a utility customer. In such situations, the particular person or entity would be more likely to seek the information directly from the customer rather than request authorization from the customer to obtain the information from a government-operated utility. Because we believe that customers are permitted to request that a government-operated utility disclose personal information to some people or entities but not to others, we also believe that the government-operated utility may ask its customers whether they want personal information released to a certain person or entity.²

Although a government-operated utility is permitted to include a box on the form that can be checked to authorize disclosure of personal information to a certain entity but not to other individuals or entities, it may not be required to include such a box on the form. Just as nothing in House Bill 859 specifically prevents a government-operated utility from asking its customers if they want information kept confidential from some organizations but not from others, nothing requires it to ask either. Section 4, which requires that government-operated utilities provide customers with a form they can use to request confidentiality, does not prescribe the contents of the form except to say that it must contain a box which customers may check to request confidentiality. Therefore, for example, a person or entity that welcomes newcomers to the city could not require the city-operated utility company to ask its customers whether they want information disclosed to that person or entity.

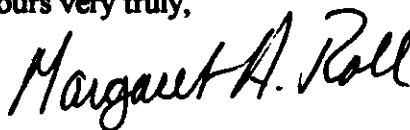
²Section 3 of House Bill 859 provides that government-operated utilities may charge fees "not to exceed the administrative costs of complying with a request of confidentiality." Acts 1993, 73d Leg., ch. 473, § 1(1), Vernon's Sess. Law Serv. at 1867.

S U M M A R Y

House Bill 859 prevents a government-operated utility from releasing personal information about a customer to an entity that welcomes newcomers to the city when the customer requests that the information be kept confidential and the entity is not affiliated with the city. Under these circumstances, none of the exceptions contained in section 5 of the act apply. However, this office cannot determine whether an entity that provides newcomer welcoming services would fall within any of the exceptions contained in section 5 if the city contracted with the entity to provide services or if the entity were otherwise affiliated with the city. Making these determinations would require the resolution of factual questions and, therefore, is not amenable to the opinion process.

A government-operated utility is permitted to, but not required to, include a box on the form it provides its customers that can be checked to authorize disclosure of personal information to a welcoming service or other particular organization while requesting that the information be kept otherwise confidential.

Yours very truly,

A handwritten signature in cursive script that reads "Margaret A. Roll".

Margaret A. Roll
Assistant Attorney General
Opinion Committee