

Legal Q&A

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May 2009

Is notice to customers required when a city water or sewer utility raises rates?

Only for customers outside the city limits. Under Texas Water Code §13.043, the governing body of a municipally owned utility, within 30 days after the date of a final decision on a rate change, shall provide individual written notice to each ratepayer eligible to appeal who resides outside the boundaries of the city. The notice must include, at a minimum, the effective date of the new rates, the new rates, and the location where additional information on rates may be obtained. The purpose of the notice is to give those customers the opportunity to appeal the rate change to the Texas Commission on Environmental Quality (TCEQ) within 90 days after notice of the rate change by the city. If the TCEQ determines that the rates imposed upon the out-of-city customers is unreasonable, it may fix new rates in its final order and include reasonable expenses. TEX. WATER CODE §13.043.

When may a city discontinue utility services?

A city may discontinue utility service to a customer only for the non-payment of a utility bill. In order to discontinue utility service due to delinquency, a city utility must ensure that due process is satisfied. This requires that the customer be given notice and an opportunity for a hearing before service is terminated. *Memphis Light, Gas & Water Division v. Craft*, 436 U.S. 1 (1977). The notice must include: (1) the reasons for disconnection of service, such as overdue payment; (2) the date by which service will be discontinued if payment is not made; and (3) information regarding the procedure by which the customer may request a hearing to protest the proposed termination of service. The hearing does not need to be formal; an informal meeting with a designated city officer or employee can suffice. The designated officer or employee must have the authority to resolve the issue and rescind the disconnection order in accordance with city policy. The notice and hearing process is necessary in order to avoid the arbitrary or erroneous disconnection of essential services such as water, sewer, and electricity.

In addition, a city that provides more than one utility service and provides solid waste disposal service may suspend service of any city-owned utility or service for a customer who has not paid his solid waste utility bill. For example, if a city provides water, sewer, and solid waste service and a customer does not pay his solid waste bill, the city may suspend the water and sewer service until the delinquent solid waste utility bill is fully paid, even if the other accounts are current. TEX. HEALTH & SAFETY CODE §364.034(d).

Finally, if a customer is given proper due process upon becoming delinquent and the utility bill remains unpaid, a city may by ordinance impose a lien against an owner's property in many cases, unless the property is a homestead that is protected by the Texas Constitution. TEX. LOC. GOV'T CODE §402.0025(d).

May a city accept payment by credit card and charge a fee to cover the processing fee?

Yes. The city council may authorize a municipal official who collects fees, fines, court costs, or other charges to collect a fee for processing the payment by credit card. TEX. LOC. GOV'T CODE §132.003(a).

The council must set the fee allowed, and it must be in an amount that is reasonably related to the expense incurred by the municipal official in processing the payment by credit card. However, the fee can in no event exceed five percent of the amount of the fee, fine, court cost, or other charge being paid. *Id.* at §132.003(b).

May a city require a social security number as a condition of service?

Texas law prohibits a city utility from requiring a customer to provide a social security number (SSN) for any reason, unless the utility adopts and makes available a privacy policy to its customers. The privacy policy adopted pursuant to Texas Business and Commerce Code Section 35.581 must include: (1) how personal information is collected; (2) how and when the personal information is used; (3) how the personal information is protected; (4) who has access to the personal information; and (5) how the personal information is disposed of. Any city utility that does not *require* a social security number from a customer is not required to adopt such a policy.

Any city that requires a social security number should also consider the requirements of Section 552.147 of the Texas Government Code. That section of the Texas Public Information Act provides that the social security number of a living person is excepted from the disclosure requirements of the Public Information Act, and provides that a governmental body is not required to request an attorney general opinion to withhold the number. In other words, a governmental body must not release the social security number of a living person.

Is personal and usage information for individual utility customers public information?

Chapter 182 of the Texas Utilities Code mandates that certain information about a utility customer be kept confidential if the customer notifies the utility in writing by way of a form created and distributed by the city. An example form is available on the TML Web site under Legal, Utilities and Right of Way, Example Documents. This information includes: (1) address; (2) telephone number; (3) volume or units of utility usage; and (4) the amount billed to or collected from the customer for utility service. Usage and billing information may be disclosed if the primary source of water for the utility is a sole-source designated aquifer. Tex. Util. Code §182.052. In addition to the provisions in the Texas Public Information Act, Chapter 182 also makes social security numbers confidential.

The utility is directed by Texas Utilities Code Section 182.052(b) to create and include with a bill sent to each customer: (1) a notice of the customer's right to request confidentiality; (2) a statement of the amount of any fee applicable to the request; and (3) a form by which the customer may request confidentiality by marking an appropriate box on the form and returning it to the government-operated utility. Each city utility should periodically include a form in its bills that allows customers to request confidentiality. However, a city utility must release a customer's

information if no written confidentiality request from a customer has been received, even if the city has not notified customers of their right of confidentiality as required by the statute. *See* Tex. Att’y Gen. Op. ORD-625 (1994).

There are certain specific exceptions to these confidentiality provisions, found in Texas Utilities Code Section 182.054. That section requires that customer information be released in response to certain requests, including those made by: (1) an official or employee of the state, a political subdivision of the state, or the United States 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 subcontractor approved by and providing services to the utility, the state, a political subdivision of the state, or the United States; (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. *See also* Op. Tex. Att’y Gen. No. JC-0219 (2000)(confirming the conclusion in ORD-625 and stating that a utility may release customer information to another utility under an interlocal contract even if customer requests that his information be withheld).

What are the federal “red flag” requirements, and how do they affect a city utility?

Last year, The Federal Trade Commission (FTC) adopted rules on identity theft “red flags” (that is., warning signs) pursuant to the Fair and Accurate Credit Transactions (FACT) Act of 2003. The new rules require any business with a “covered account” to adopt and implement an identity theft program. As a covered account is defined as one where an entity (such as a municipal utility) provides a service or good before the consumer pays for it, most cities that operate a municipal utility will be affected by these new rules. For example, most municipal water utilities provide water to the customer, then bill the customer later based on consumption.

Municipal utilities must, by May 1, 2009, adopt and implement a written program that: (1) identifies relevant identity theft “red flags” to the utility or other covered entity; (2) provides for detection of those red flags; (3) provides for appropriate responses to any red flags that are detected; and (4) ensures that the program is updated periodically to address changing risks. Red flags may include unusual account activity, altered identity documents that are used to apply for an account, and a variety of other signs. Appropriate action in response to a red flag might include, among other actions, verification of personal information, contacting the customer, or other action that would prevent identity theft. Examples of policies and programs are available on the TML Web site under Legal, Utilities and Right of Way, Example Documents.