
Coates' Canons Blog: Disclosing Utility Customer Billing Information

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May a local government or public authority that provides utility or public enterprise services disclose its customer billing information in each of the following scenarios?

- (a) A customer's relative wants to know if the customer is delinquent on his utility payments;
- (b) A prospective home-buyer wants to know the average utility usage by the current owner-customer;
- (c) A unit wishes to mail its utility bills in post-card format, with billing information visible on the face of the post-card;
- (d) A local university department is compiling utility billing information for a research project;
- (e) A unit wishes to inform a landlord that a tenant-customer is delinquent on his utility payments;
- (f) A customer wants to compare her utility bills to that of all other customers residing in her neighborhood.

According to **G.S. 132-1.1(c)**, "billing information compiled and maintained by a city or county or other public entity providing utility services in connection with the ownership or operation of a public enterprise, excluding airports, is not a public record as defined in **G.S. 132-1.**" And yet, with the exception of certain protected information (discussed below), a local government or public authority that provides utility or public enterprise services likely may disclose its customer billing information in all of the above scenarios. To understand why, let's take a closer look at the statutory provision.

Billing Information

First, what constitutes "billing information" for purposes of the statute? Billing information is "any record or information, in whatever form, compiled or maintained with respect to individual customers . . . relating to services [the local government or public authority] provides or will provide to the customer." The definition is broad and likely includes any information collected by the unit or authority in connection with establishing an account (including credit check information), the amount of utility or enterprise services used by a customer, and the payment history on individual customer accounts. It also may include information that is generated by the unit or authority from its customer billing information, such as customer lists or cut-off lists.

Disclosure of Billing Information

Second, what does it mean that billing information is "not a public record"? Does it mean that a local unit or authority is prohibited from disclosing the information? Or, does it merely mean that a local unit or authority does not have to disclose the information? I believe it likely means the latter.

G.S. 132-1.1(c) states that:

Nothing contained herein is intended to limit public disclosure by a city or county of billing information:

- (1) That the city or county determines will be useful or necessary to assist bond counsel, bond underwriters, underwriters' counsel, rating agencies or investors or potential investors in making informed decisions regarding bonds or other obligations incurred or to be incurred with respect to the public enterprise;
- (2) That is necessary to assist the city, county, State, or public enterprise to maintain the integrity and quality of services it provides; or
- (3) That is necessary to assist law enforcement, public safety, fire protection, rescue, emergency management, or judicial officers in the performance of their duties.

Thus, the statute specifically authorizes a local unit or authority to disclose the billing information, in its discretion, under the stated circumstances. And, **G.S. 132-1.1(c)(2)**, in particular, is very broad. In fact, arguably any of the scenarios described above may be "necessary to assist" the local unit or authority in maintaining the "integrity and quality" of its services, at least under certain circumstances.

But, what about the scenarios that are at the margins, or other scenarios that do not even arguably appear to fit into any of the specified circumstances listed in the statute. May the billing information be disclosed under these circumstances? Arguably, yes. The exclusions from public records in **G.S. 132-1.1** are permissive, not mandatory. (Compare with the exclusions in **G.S. 132-1.2**, which are mandatory.) And, the statutory language does not expressly prohibit a local government from disclosing billing information. Thus, again arguably, a local government or public authority may disclose the billing information under any circumstance, in its discretion. Excluding the billing information from the public records merely protects the information from required disclosure.

Why, then, include the specific list of circumstances under which the information may be disclosed? My colleague, David Lawrence, has argued that, based in part on the legislative history of the statute, a plausible interpretation of the explicit circumstances in **G.S. 132-1.1(c)** is that the General Assembly wanted to make it clear that local governments could disclose billing information in the three listed circumstances, but that the list is not exhaustive as to all the circumstances under which public disclosure might be made. Although he cautions that if a local unit or public authority wishes to disclose billing information in circumstances that are not among those listed in the statute, it should do so pursuant to a decision made by the governing board, and it should apply any governing board directive consistently. (For David's detailed analysis, see **David M. Lawrence, 1997-2003 Supplement to Public Records Law for North Carolina Local Governments 55-58 (Institute of Government 2004)**.)

Special Provisions for Protected Information

Note that a local unit or public authority is prohibited from disclosing certain information that may be contained in its customer utility billing information. Except under limited circumstances, **G.S. 132-1.10** prohibits a local government or public authority from intentionally communicating or otherwise making available to the general public certain identifying information, including Social Security or employer taxpayer identification numbers; driver's license, state identification card, or passport numbers; checking or savings account numbers; credit or debit card numbers; digital signatures; personal identification code numbers; biometric data (such as eye scans, voice scans, and DNA); fingerprints; or passwords. (The requirement does not apply if the identifying information is sufficiently redacted.) Furthermore, **G.S. 132-1.2(2)** prohibits a local unit or authority from revealing an account number used for electronic payment (defined as payment by charge card, credit card, debit card, or by electronic funds transfer).

Links

- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_132/GS_132-1.1.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_132/GS_132-1.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_132/GS_132-1.2.html
- www.sog.unc.edu/publications/books/public-records-law-north-carolina-local-governments-second-edition
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_132/GS_132-1.10.html