



Bureau of
Energy Resources,
United States
Department of State



National
Association of
Regulatory
Utility
Commissioners

Balancing confidentiality with public access to information

Cat Nguyen

Connecticut Public Utilities Regulatory Authority

August 25, 2015





TENSION BETWEEN TRANSPARENCY AND CONFIDENTIALITY

- “Sunlight is the best disinfectant.”

~Justice Louis Brandeis

- “You can’t run a hot dog stand without confidentiality.”

~Edmund Gullion



AUTHORITY OF REGULATOR TO ACCESS RECORDS

- Utility regulator has very broad regulatory authority over utilities.
- Regulator can inspect records and require production of records.
- Regulator is required to obtain certain confidential information to perform its function.



FREEDOM OF INFORMATION

- Connecticut law favors open government and public disclosure of records.
- “Public Record” is broadly defined.
- Exemptions from public disclosure are narrowly construed.



FREEDOM OF INFORMATION

PUBLIC MEETINGS

People have the right:

- To know when a public agency is going to have a meeting;
- To know what will be discussed at the meeting;
- To attend, video tape, audio record, or photograph that meeting; and
- To have access to the minutes of the meeting.

RECORDS

People have the right:

- To review documents; and
- To get a copy of any paper records, emails, tape recordings, photographs.



“PUBLIC RECORDS OR FILES”

Defined as:

- Any recorded data or information relating to the conduct of the public's business,
- prepared, owned, used, received or retained by a public agency, or to which a public agency is entitled to receive a copy by law or contract,
- whether such data or information be handwritten, typed, tape-recorded, printed, photographed or recorded by any other method.



PUBLIC RECORDS - EXEMPTIONS

Exemptions pertaining to utility regulation include:

- Preliminary drafts and notes;
- Personnel or medical files (invasion of personal privacy);
- Pending litigation - strategy and negotiations;
- Trade secret and commercial or financial information;
- Personal financial data of applicants for license or permit;
- Security manuals and emergency plans or records that may result in safety risk;
- Water company's plans (risk management, operational or supply);
- IT codes or software;
- Bids (until contract is awarded); and
- Other specific state or federal exemptions.



NEED FOR CONFIDENTIALITY

- Disclosure of trade secrets or proprietary commercial information may cause irreparable harm to company.
- Disclosure of the identity of whistleblowers would discourage employees from reporting utility company's misfeasance or malfeasance.
- Disclosure of bids and responses to requests for proposals would impair the efforts of agency or utilities to contract for goods or services.
- Disclosure of customer personal information may expose customer to personal financial harm.
- Market participants are bound by confidentiality rules of transmission system operators.



PURA PROCEDURES FOR FILING CONFIDENTIAL RECORDS

- A person or company seeking to protect a document from public disclosure must file:
 - A letter identifying the filer, docket number and the proprietary information;
 - A memorandum of law citing the statute or regulation allowing exemption from disclosure and providing an analysis of how the information meets the legal standards;
 - An affidavit from a witness stating specifically why the information should be withheld from public disclosure; and
 - A copy of the proprietary information in a sealed envelope clearly labeled “Confidential-Proprietary.”
- If a document contains both public and confidential information, a redacted version of such document must be filed in the public record.



PURA PROCEDURES FOR FILING CONFIDENTIAL RECORDS

- Upon receipt of a request for protection from public disclosure, PURA reviews the information in the sealed envelope and makes a ruling.
 - If granted, PURA signs a protective order and the information in the sealed envelope is kept in a locked file.
 - Protected information can be viewed only by PURA staff and certain other governmental agencies.
 - If denied, PURA directs the company to retrieve the sealed envelope and file the information as public records.



How Do We Balance Freedom of Information with Confidentiality?

- PURA must comply with the laws as written.
- Factors to consider:
 - Safety and security risks – to the public, to individual persons
 - Will a legitimate function of the agency be undermined by the disclosure?
 - Necessity of a state goal or agency mission
 - Necessity of the company



BALANCING FREEDOM OF INFORMATION WITH CONFIDENTIALITY

- Philosophy and attitude of Commissioners
 - Consumer protection outweighs commercial information
 - Favors public disclosure

Checks and Balances:

- All PURA decisions are subject to judicial review.
- Legislature can amend laws in response to PURA or court decisions.



TYPES OF INFORMATION COMMONLY REQUESTED FOR PROTECTION

From regulated utilities:

- Corporate information;
- Programs involving third-party entities (e.g., costs, revenues, profits of program);
- Customer information;
- Bids;
- Competitive electric supplier; information; and
- Cost studies.

From electric suppliers:

- Financial information, such as:
 - Financial assurance (letters of credit, bond);
 - Costs (wholesale, contracts)
- Corporate structure;
- Prices charged to customers;
- Names of agents or vendors;
- Marketing materials;
- Source of generation;
- Business plans and methods; and
- Customer contracts.



POSSIBLE SOLUTIONS

Ways to get maximum information into public domain:

- Aggregation of data: e.g. disclosing summary or grouping of data;
- Masking: e.g. concealing the identity of company or customer;
- Timing of publication: e.g. delaying disclosure of information for a period of time; and
- Timeframe: e.g. disclosing information for a longer period of time.



CONCLUSION

- The regulator needs information. The more information we have, the better we can do our job.
- Tension grows with more competitive markets.
- Utilities are reluctant to share information that gives them competitive advantage over competitors.
- Determination of confidentiality must be made on a case-by-case basis.