



**THE ATTORNEY GENERAL
OF TEXAS**

November 10, 1987

**JIM MATTOX
ATTORNEY GENERAL**

Mr. L. L. Bowman, III
Commissioner
Texas Savings and Loan
Department
2601 N. Lamar, Suite 201
Austin, Texas 78705

Open Records Decision No. 483

Re: Whether information relating to reviews of particular savings and loan institutions is excepted from disclosure under the Open Records Act, article 6252-17a, V.T.C.S.

Dear Mr. Bowman:

You ask whether certain information held by the Texas Savings and Loan Department is excepted from required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. You submit two letters requesting specific information and state that these letters are typical of the information requests received by the department. The first letter requests very specific information about a review of the lending practices and financial condition of a particular savings and loan in Texas. The second letter seeks any reports and compilations of information the department may have regarding the condition of the savings and loan industry in Texas during 1986 and 1987, with emphasis on identifying troubled savings and loan institutions. The second letter also seeks documents describing "agency guidelines" with regard to overseeing residential and commercial real estate loans and with regard to the standards used in classifying the performance of such loans. You state that the second letter "does not appear to be a true open records request."

Because you express doubt about the status of the second letter as a valid request for information under the Open Records Act, several basic principles must be clarified. The basis for your doubts is unclear. The second letter does not mention expressly the Texas Open Records Act. Additionally, the second letter requests reports, compilations of information, and agency guidelines.

Subsection 7(a) of the Open Records Act provides:

If a governmental body receives a written request for information which it considers within one of the exceptions stated in Section 3 of this Act, but there has been no previous determination that it falls within one of the exceptions, the governmental body within a reasonable time, no later than ten days, after receiving a written request must request a decision from the attorney general to determine whether the information is within that exception. If a decision is not so requested, the information shall be presumed to be public information. (Emphasis added.)

Although a request for information under the Open Records Act must be in writing before section 7 applies, see Open Records Decision No. 304 (1982), no particular request form or "magic words" are required by section 7. Consequently, the fact that the second letter does not name the Texas Open Records Act does not prevent it from triggering section 7.

The second letter also seeks reports, compilations of information, and agency guidelines. The Open Records Act does not require governmental bodies to prepare new information. Open Records Decision Nos. 452 (1986); 342 (1982); cf. Attorney General Opinion JM-672 (1987) (some compilation may be required). Nor does the act require the preparation of information in a particular form requested by a member of the public. Open Records Decision No. 145 (1976); see also Open Records Decision No. 347 (1982). Consequently, if the information requested in the second letter exists, it is subject to the act and can be withheld only if it falls within one of the act's exceptions to disclosure. Even if the information does not exist, the second letter constitutes a "valid" request under the Open Records Act. It would simply be a request with which you could not comply.

You indicate, however, that you do not prepare general reports, compilations, or "agency guidelines on loan performance." Your only regular compilation is a monthly computer printout that is far from general -- it contains very specific information about the condition of identified savings and loan institutions. You also indicate, however, that the department recently prepared a

special report and memorandum containing a general discussion of the condition of the industry and the number of institutions under supervision for a governor's task force. You indicate that you do not have general "agency guidelines" aside from those available to the public in the form of promulgated regulations. See generally V.T.C.S. art. 6252-13a, §4(a)(2) (all rules and all other statements of policy or interpretations must be made available to the public); see also V.T.C.S. art. 6252-17a, §§6(8), 6(10), 6(13), 6(14). You do, however, have the investigation information sought in the first letter. Accordingly, there are three types of information at issue here: (1) investigatory reports and orders regarding a particular savings and loan institution, (2) the department's monthly monitoring reports, and (3) a general report and memorandum on the condition of the industry.

Under the Open Records Act, all information held by a governmental body must be disclosed to the public unless the information falls within one of the act's specific exceptions to disclosure. You suggest that sections 3(a)(1) and 3(a)(12) protect the information in question from required disclosure.

Section 3(a)(1) excepts from disclosure:

information deemed confidential by law, either Constitutional, statutory, or by judicial decision.

You assert that several sections of the Texas Savings and Loan Act, article 852a, V.T.C.S., provide statutory confidentiality for the information in question for purposes of section 3(a)(1).

Section 11.18 of the Savings and Loan Act provides:

The Commissioner and any examiner, inspector, deputy, assistant or clerk of the Savings and Loan Department of Texas, appointed or acting under the provisions of this Act, failing to keep secret any facts or information regarding an association obtained in the course of an examination or by reason of his official position, except when the public duty of the person requires, or who willfully makes a false official report as to the condition of such association, shall be removed from office or

further employment with the department. Reports of examinations made to the Commissioner shall be regarded as confidential and not for public record or inspection, except that for good reason same may be made public by the Commission, but copies thereof may be furnished to the Federal Home Loan Bank Board or to the Federal Home Loan Bank for the purpose of meeting the requirements of the Federal Home Loan Bank Act. [Footnote omitted]. Nothing herein shall prevent the proper exchange of information relating to associations and the business thereof with the representatives of savings and loan departments of other states or to any other department, agency, or instrumentality of this or another state or the United States if the Commissioner determines the disclosure to be necessary or proper for the enforcement of the laws of this state, another state, or the United States. Any official violating any provision of this Section shall be liable, with his bondsmen, to the person or corporation injured by the disclosure of such secrets. Unless otherwise provided by this Act, the foregoing provisions shall not apply to any facts or information or to any reports of investigations obtained or made by the Commissioner or his staff in connection with any applications for a charter under this Act or in connection with any hearing held by the Commissioner under this Act, and any such facts, information or reports may be included in the record of the appropriate hearing. Notwithstanding the foregoing, the Commissioner shall report promptly to the Savings and Loan Section of the Finance Commission when a supervisory order has been issued under Chapter 8 of this Act. The Commissioner shall furnish such information about the association or the person as the section members shall require in executive session and all information discussed in the executive session is confidential. (Emphasis added.)

As amended by Acts 1987, 70th Leg., ch. 119, §17, at 577-78. Section 11.18 protects reports of certain

examinations and creates a penalty for improper disclosure of these reports.

Additionally, section 8.05 authorizes several methods of intervention in the business of troubled savings and loan institutions and provides, in part:

(d) A temporary or final supervisory order and all notices, correspondence, or other records relating to the order are confidential and may not be revealed to the public, except for good reason by the commissioner, or in a hearing or judicial proceeding under Section 8.06 or 8.07 of this Act. However, the commissioner may disclose the information to a department, agency, or instrumentality of this or another state or the United States if the commissioner determines that the disclosure is necessary or proper for the enforcement of the laws of this or another state or the United States.

As amended by Acts 1987, 70th Leg., ch. 119, §5, at 562. Like section 11.18, section 8.05(d) applies to special examinations and orders; neither section applies to information collected in connection with (1) formal hearings held under the act, or (2) applications for a charter.

With regard to the first type of action, hearings, it should be noted that the 70th Legislature amended the Savings and Loan Act to make information in certain hearings confidential under certain circumstances. See Acts 1987, 70th Leg., ch. 119, §§13, 15, at 571, 576. Section 13 of chapter 119 adds section 9.07 to the act. Section 9.07 provides, in part, that applications for the merger or consolidation of foreign and domestic associations and information relating to the applications are confidential if the commissioner determines that the domestic association is in an unsafe condition. Section 15 of chapter 119 amends section 10.03(b) of the act. Section 10.03(b) provides that applications for reorganization, merger, or consolidation are confidential if the commissioner designates the merger a supervisory merger.

With regard to the second manner of collecting information, section 2.01(b) of article 852a, V.T.C.S.,

applies to information submitted in connection with applications for a savings and loan charter. Section 2.01(a) requires the submission of several things with an application for a charter, including:

(5) financial information about the applicants, incorporators, directors, or shareholders that is required as part of the application for charter by rules of the Savings and Loan Section of The Finance Commission of Texas.

Section 2.01(b) provides that:

(b) Financial information submitted under Subdivision (5) of Subsection (a) of this section is confidential and privileged from public disclosure, unless the commissioner finds that public disclosure is necessary.

You indicate that:

This Department maintains a charter file for each savings and loan association under its jurisdiction. That file contains the association's articles [of] incorporation, its bylaws, its bond, and all Commissioner's orders pertaining to any applications for additional offices or merger applications which may have been filed with this Department. Historically, the contents of such files have been made available for inspection by members of the public upon request. The other files maintained by this Department on each particular association pertain to examination, supervision and regulation of that association, and thus, contain information obtained in the course of the examination, investigatory, supervisory, regulatory or other official activities of this Department and its personnel.

You assert that section 11.18 in conjunction with section 3(a)(1) of the Open Records Act protects all information held by the department other than the information contained in charter files. This assertion is somewhat overbroad.

The first two categories of information at issue here -- the investigatory report and orders regarding a particular institution and the monthly monitoring reports -- directly identify troubled savings and loan institutions. This information is protected by the Savings and Loan Act in conjunction with section 3(a)(1) of the Open Records Act. Insofar as the information requested in these categories consists of reports of examinations made into the condition of specific savings and loan institutions, the information may be withheld under sections 11.18 and 8.05(d) of the Savings and Loan Act in conjunction with section 3(a)(1) of the Open Records Act. This office has reviewed copies of the documents in question and determined that they may be withheld under section 3(a)(1). Additionally, insofar as the information requested in these categories may include financial information submitted with an application for charter, the information may be withheld under section 2.01(b) of the Savings and Loan Act in conjunction with section 3(a)(1) of the Open Records Act. The third category, however, contains general information about the condition of the industry. This general kind of information does not fall within sections 11.18, 8.05(d), or 2.01(b) of the Savings and Loan Act.

Section 11.18 of the Savings and Loan Act focuses on preserving the confidentiality of sensitive financial information. Section 8.05(d) enables the department to correct and eliminate the grounds for supervisory action over a savings and loan institution on a confidential basis. Both provisions serve two basic purposes: to encourage savings and loans to remedy problems without drastic formal action and to prevent public panic with regard to particular institutions. These sections also enable the department to conduct investigations without revelation of the department's purpose and strategy. If a department report is merely statistical and does not identify or reveal information about particular savings and loan institutions, these sections do not apply.

The third category of information at issue here consists of two documents -- a staff report to the governor's task force and a memorandum from the department's general counsel to the governor's general counsel. The first document does not reveal investigation details regarding particular savings and loan institutions. It provides a brief history of savings and loan regulation in Texas and a description of the current structure and operations of the Savings and Loan

Department. Exhibits incorporated in this report contain statistical data on the general condition of the industry: applications for charters processed, applications for change of control, the number of examinations conducted, the number of enforcement actions, and the number of consumer complaints.

With regard to this report, you state that revealing the number of institutions under supervision could enable members of the public to deduce which institutions were subject to supervision and thereby impede your supervision efforts. You also indicate that revealing this data could have an adverse affect on public confidence in savings and loan institutions. Given the total number of savings and loan institutions in Texas, however, it would be difficult to deduce specific institutions under investigation. It would be even more difficult to deduce specific investigation details. Moreover, the policy expressed in section 1 of the Open Records Act states "The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know." The report itself concludes:

We will be happy to attempt to answer any questions the Task Force may have. However, we would request that you consider that the Department and its staff are subject to confidentiality requirements under the Texas Savings and Loan Act, and that failure to observe those requirements has significant consequences. Accordingly, we respectfully request that you not inquire as to specific associations or actions taken in regard to specific associations, as all such information is confidential under the Act. (Emphasis added.)

This recognizes that the general, statistical data is not confidential.

In contrast, the second document in the third or "general" category of information contains some specific information identifying individual savings and loan institutions; this information may be withheld. Copies of the documents have been marked for your information. The unmarked portion of these documents cannot be withheld under section 3(a)(1).

You also suggest that section 3(a)(12) of the Open Records Act protects all information other than the information contained in charter files. Section 3(a)(12) protects from required disclosure

information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions, and/or securities, as that term is defined in the Texas Securities Act. (Emphasis added.)

Like sections 11.18 and 8.05(d) of the Savings and Loan Act, this section focuses on specific information generated during the regulation or supervision of financial institutions. Section 3(a)(12) applies only to specific examination, operating, or condition reports. Open Records Decision No. 29 (1974). For example, financial information in a pawnshop license application submitted to the Consumer Credit Commission is not within section 3(a)(12) because it is not an "examination, operating, or condition report." Open Records Decision No. 194 (1978). On the other hand, section 3(a)(12) does apply to a detailed presentation of a credit union's condition and operation and to a particular investment proposed by the credit union. Open Records Decision No. 187 (1978). Section 3(a)(12) also applies to the investigative file of the State Securities Board in enforcing the Texas Securities Act. Open Records Decision No. 130 (1976). Additionally, section 3(a)(12) may protect information that indirectly reveals the contents of examination, operating, or condition reports. For example, a form acknowledging receipt of an examination report of a state bank conducted by the Department of Banking will fall within section 3(a)(12) when the presence or absence of certain language in the form indirectly indicates the report's conclusions. Open Records Decision No. 261 (1980). This section does not, however, encompass general discussions and statistics on the overall condition of the savings and loan industry that do not identify particular institutions under investigation or supervision.

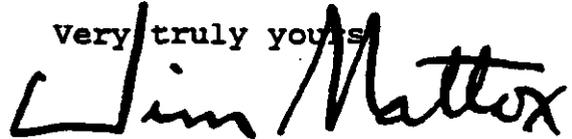
S U M M A R Y

The Texas Savings and Loan Department may withhold from public disclosure reports of

investigations that identify particular savings and loan institutions pursuant to sections 11.18 and 8.05(d) of the Texas Savings and Loan Act, V.T.C.S. art. 852a, in conjunction with section 3(a)(1) of the Texas Open Records Act, V.T.C.S. art. 6252-17a. Additionally, insofar as the information requested consists of financial information submitted with an application for a charter, the information may be withheld under section 2.01(b) of the Savings and Loan Act in conjunction with section 3(a)(1) of the Open Records Act.

Neither these provisions nor section 3(a)(12) of the Open Records Act, however, protect general discussions, compilations, or statistics regarding the general condition of the savings and loan industry that do not identify particular institutions under investigation or supervision.

Very truly yours,



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