



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

May 25, 1989

Mr. Richard D. Latham
Securities Commissioner
State Securities Board
Box 13167, Capitol Station
Austin, Texas 78711

Dear Mr. Latham:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 6216; this decision is OR89-150.

Under the Open Records Act, all information held by governmental bodies is open unless the information falls within one of the act's specific exceptions to disclosure. The act places on the custodian of records the burden of proving that records are excepted from public disclosure. If a governmental body fails to claim an exception, the exception is ordinarily waived unless the information is deemed confidential under the act. See Attorney General Opinion JM-672 (1987). The act does not require this office to raise and consider exceptions that you have not raised.

The State Securities Board received an open records request for the Board's complete file on First Mercantile Corporation (FMC), including records "concerning the registration of FMC Securities, the registration of FMC as a dealer, and the registration of salesmen of FMC Securities." The Board released to the requestor portions of its file; you contend, however, that subsections 3(a)(8), 3(a)(11), and 3(a)(12) of the Open Records Act protect from required public disclosure certain internal memoranda, notes, work-sheets, and other data related to the regulation of FMC.

Section 3(a)(12) of the act protects from required public disclosure all records, including internal memoranda and notations, contained in the State Securities Board files that relate to the regulation or supervision of the sale of securities, see Open Records Decision No. 158 (1977), unless such records are deemed public by law. See, e.g., V.T.C.S.

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art. 581-11. The portions of the "Texas State Securities Board Docket Sheet/Issuer's Permit" and the "Texas State Securities Board Docket Sheet/Memo" that precede the "Comments/Exhibits" caption are in fact made public by article 581-11 and must be released. The remainder of the requested records clearly come under the protection of section 3(a)(12); you may, therefore, withhold these documents pursuant to section 3(a)(12).

We also note that you submitted with the requested documents a copy of "reference material from a bank analyst manual." This office does not believe that this reference material is within the ambit of the request for information; we therefore decline to address whether the manual is subject to required public disclosure.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR89-150.

Yours very truly,

*Open Government Section
of the Opinion Committee*

Open Government Section
of the Opinion Committee
Prepared by Jennifer S. Riggs
Chief, Open Government Section

JSR/RWP/bc

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