THE ATTORNEY GENERAL
OF TEXAS

August 23, 1989

JIM MATTOX
ATTORNEY GENERAL

Mr. Kenneth W. Littlefield
Commissioner
Texas Department of Banking
2601 N. Lamar Blvd.
Austin, Texas 79705-4294

Dear Mr. Littlefield:

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# 5451; this decision is OR89-271.

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 Texas Department of Banking (the department) received an open records request for information relating to the department's investigation and examination of the financial condition of InterFirst Corporation. Except for the minutes of InterFirst's board of directors' meetings, which you do not declare to be excepted from public disclosure and have presumably released, you contend that all of the requested information comes under the protection of subsections 3(a)(1), (a)(10), (a)(12), and (a)(17).

Open Records Decision No. 147 (1976) governs your request with regard to subsections 3(a)(1) and (a)(12). Much of this information is deemed confidential by article 342-210, V.T.C.S. The remaining information directly relating to the investigation and examination clearly comes under the protection of section 3(a)(12).

We note, however, that because the primary purpose of section 3(a)(12) is to protect information generated during the regulation or supervision of "financial institutions," a

list of names of the department's employees who participated in the examinations, assuming such a list exists, would not come under the protection of section 3(a)(12) or any of the other exceptions you raise. On the other hand, the Open Records Act does not require you to compile such a list if it did not exist at the time of the request.

Finally, you may withhold pursuant to section 3(a)(17) the home addresses and telephone numbers of the department's employees who designated, prior to the time of the open records request, that this information not be disclosed, pursuant to section 3A of the act.

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 OR89-271.

Yours very truly,

Open Government Section
of the Opinion Committee

Open Government Section
of the Opinion Committee
Approved by David A. Newton
Assistant Attorney General

DAN/RWP/bc

Ref.: ID# 5451

cc: Mr. Jules Brody
Stull, Stull & Brody
Counsellors at Law
6 East 45th Street
New York, N.Y. 10017