



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

May 1, 1990

Mr. Kenneth W. Littlefield
Commissioner
Texas Department of Banking
2601 N. Lamar Blvd.
Austin, Texas 78705-4294

OR90-161

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# 8654.

The Department of Banking (the department) has received a request for five items of information from the liquidation records of a failed bank:

1. Original list of depositors and creditors and the dollar amounts of all deposits;
2. The amount of any payments made by the Banking Commissioner, to whom they were made, and when they were made;
3. The assets of the bank and the terms of settlement;
4. The latest list of depositors and the amount of any deposits;
5. The date notice was first sent to the bank and/or its depositors that the bank was to be taken over.

The department claims exception to the release of the depositor information in items 1, 2, and 4 pursuant to section 3(a)(1) of the Open Records Act, article 6252-17a, V.T.C.S., which protects "information deemed confidential by law, either Constitutional, statutory, or by judicial decision," and article 342-705, V.T.C.S., which states that no financial institution shall "permit third parties to examine the amount deposited by any depositor or other

records pertaining to the deposits, accounts, loans, or other transactions of a depositor, owner, borrower or customer." The department proposes that the confidentiality of the depositor information while in the possession of the bank should continue after its transfer to the department. The department sent for our review an incomplete list of claimants, with the amounts claimed and the actual amount distributed, as a sample of the information requested. Because the department does not claim exception to the release of the information in item 3, it is assumed that this information has been released. The information in item 3, the assets of the bank and the terms of the settlement, necessarily includes some of the information requested in items 1 and 2, i.e., the amounts of all deposits, the amount of any payments made by the Banking Commissioner, to whom they were made, and when they were made. Thus, we will limit our consideration to the appropriateness of the release of the depositor information.

It is well established that confidential information can be transferred between state agencies without losing its confidential status under the Open Records Act. See Attorney General Opinions JM-446 (1986); H-683 (1975). Whether the confidentiality is maintained after a transfer to a governmental body from a non-governmental body, such as a financial institution, is a question this office has not yet addressed, nor need we do so at this time as this question can be resolved by considering the protection of the common law right of privacy under section 3(a)(1).

Section 3(a)(1) of the Texas Open Records Act exempts from public disclosure information deemed confidential by law, including information made confidential by common-law privacy. Open Records Decision No. 545 (1990). Under the two-prong test for common law privacy, devised in Industrial Found. of the South v. Texas Indus. Accident Bd., 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 930 (1977), information is protected from public disclosure by common-law privacy if: (1) it contains highly intimate or embarrassing facts about a person's private affairs the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.

Financial information relating to an individual ordinarily satisfies the first prong of the common law privacy test because it constitutes highly intimate or embarrassing facts about an individual, such that its public disclosure would be objectionable to a person of ordinary sensibilities. Open Records Decision No. 373 (1983).

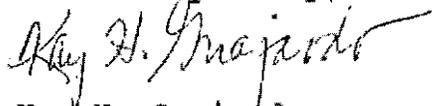
Information about an individual's personal bank records constitutes background financial information which may be withheld under the common law right of privacy. Id.; see also Open Records Decision No. 396 (1983).

The second prong of the test for the common law right of privacy is whether the information is of legitimate concern to the public. The depositor information of a bank involved in liquidation does not relate to the expenditure or receipt of public funds; such information is of no legitimate concern to the public. See id.; see also Open Records Decision Nos. 545 (1990); 481 (1987).

The two prongs of the common law right of privacy being satisfied, the depositor information is deemed confidential by section 3(a)(1) of the Texas Open Records Act. You may withhold this information.

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 OR90-161.

Yours very truly,



Kay H. Guajardo
Assistant Attorney General
Opinion Committee

KHG/le

Ref.: ID# 8654

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