



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 5, 1992

Ms. Anna E. Gonzales
Assistant General Counsel
Texas Department of Banking
2601 N. Lamar Boulevard
Austin, Texas 78705-4294

OR92-87

Dear Ms. Gonzales:

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# 14907.

You have received a request for "all information, including letters for and against, in regard to the bank charter application for First Bank & Trust to be located in Flower Mound, Texas." Although you do not object to release of some of the requested information, you seek to withhold the verified statement of the applicant's stock subscribers and financial statements of the proposed bank officers and directors under sections 3(a)(1) and 3(a)(10) of the Open Records Act. You also claim that work papers prepared by Texas Department of Banking ("the department") employees in connection with the application are excepted from required public disclosure by sections 3(a)(1), 3(a)(3), 3(a)(10), 3(a)(11) and 3(a)(12) of the Open Records Act. Finally, you claim that a commercial lease agreement is excepted from required public disclosure by section 3(a)(4) of the Open Records Act.

At the outset, we note that you have not properly invoked the section 3(a)(4) exception. Section 3(a)(4) excepts from required public disclosure "information which, if released, would give advantage to competitors or bidders." The purpose of section 3(a)(4) is to protect governmental interests in commercial transactions. Open Records Decision No. 541 (1990). You do not indicate how the requested information relates to a competitive bidding situation or to a commercial

transaction to which the department is party. Accordingly, you may not withhold the commercial lease agreement under section 3(a)(4).

Section 3(a)(1) excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." Article 342-305, V.T.C.S., governs applications for banking charters. Subsection (B) of that article provides in part:

[T]he verified statement of subscribers to stock shall be confidential and privileged from public disclosure prior to the final determination by the [State Banking] Board of the application for a charter, unless the Board shall find that public disclosure prior to public hearing and final determination of the charter application is necessary to a full development of the factual record.

You advise us that the board has not made a final determination with respect to the bank's application nor has it found that disclosure prior to hearing is necessary to develop the factual record. We conclude, then, that the verified statement of subscribers to stock must be withheld from required public disclosure under section 3(a)(1) of the Open Records Act.

You also seek to withhold the financial statements of the proposed officers and directors under section 3(a)(1). Subsection (F) of article 342-305, V.T.C.S., provides:

The financial statement of a proposed officer or director filed under this article is confidential and not subject to public disclosure.

Accordingly, we conclude that the financial statements of the proposed officers and directors must be withheld from required public disclosure under section 3(a)(1) of the Open Records Act. *See also* Open Records Decision No. 147 (1976) (addressing article 342-210, V.T.C.S., which makes confidential all information obtained by the Banking Department relative to the financial condition of state banks).

You claim that working papers prepared by department employees in connection with the application are excepted from required public disclosure under section 3(a)(3) of the Open Records Act. In Open Records Decision No. 551

(1990), this office held that a section 3(a)(3) exception is applicable only when litigation is pending or reasonably anticipated and if the requested information relates to that litigation. The litigation exception may be applied to records relating to a contested case before an administrative agency under the Administrative Procedure and Texas Register Act (APTRA), article 6252-13a, V.T.C.S. Open Records Decision Nos. 588 (1991); 368 (1983). You have demonstrated that the requested information relates to a pending contested administrative hearing before the State Banking Board and that this proceeding is subject to APTRA. See V.T.C.S. art. 342-115, § 9, art. 342-305; 7 T.A.C. § 31.7. As you have demonstrated that the information relates to the pending administrative hearing under APTRA, we conclude that it may be withheld from required public disclosure under section 3(a)(3). Please note that this ruling applies only for the duration of the litigation and to the documents at issue here. As we resolve your request under sections 3(a)(1) and 3(a)(3), we need not address the applicability of sections 3(a)(10), 3(a)(11), and 3(a)(12) at this time.

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 OR92-87.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee

MRC/GK/mc

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cc: Ms. Doe Royal
Editor and Publisher
The Pipe Line
9217 Old Cross Timbers Road
Flower Mound, Texas 75028