



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 24, 1995

Mr. Brian R. Herrick
Assistant General Counsel
Texas Department of Banking
2601 North Lamar Boulevard
Austin, Texas 78705-4294

OR95-083

Dear Mr. Herrick:

The Texas Department of Banking (the "department"), by letter dated August 29, 1994, asks whether certain information requested by Mr. James E. Moody on August 22, 1994, is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 28775.

The department has received a request for a list of banks and trusts which may be for sale or are in a failing condition. You state that the department "is aware of information which may fit the description of the requested information." However, you go on to assert that "[a]lthough the financial condition of banks and trust companies is monitored, and a list of potentially failing banks is maintained by the [d]epartment, no 'lists' exist at this time, because there are no state banks considered presently to be in a failing condition" and that "[n]o list of failing trust companies ever has been maintained by the [d]epartment." In addition, you have submitted to this office the lists the department does maintain for all state regulated banks and trust companies. You have no objections to providing this list to the requestor.

Although we are slightly confused by your assertion that you are "aware of information which may fit the description of the requested information," it is apparent that as there were no banks in failing condition at the time of the request and as the bank does not keep a list of trusts in failing condition, there were no records in existence that were responsive to Mr. Moody's request for information at the time the request was made. Open Records Decision No. 452 (1986) (governmental body need not treat request as embracing information prepared *after* request was made, or to inform requestor

subsequently when the information *does* come into existence). As the Open Records Act applies only to information in existence and does not require a governmental body to prepare new information, Open Records Decision Nos. 605 (1992); 572 (1990); 430 (1985), we need not speculate about whether such information would be excepted from required public disclosure if it did exist.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/LBC/rho

Ref.: ID# 28775

Enclosures: Submitted documents

cc: Mr. James E. Moody
9635 Highway 6 North
Houston, Texas 77095
(w/o enclosures)