



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 9, 1996

Ms. D'Ann Johnson  
Assistant General Counsel  
Texas Department of Banking  
2601 N. Lamar Boulevard  
Austin, Texas 78705-4294

OR96-1638

Dear Ms. Johnson:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 36457.

The Texas Department of Banking (the "department") has received a request for various information. You say the department will release portions of the requested information. However, the department seeks to withhold from required public disclosure part of the requested information, specifically, portions of the telephone logs for headquarters' employees for the period of November 1, 1994 through February 28, 1995. In conjunction with section 552.101 of the Government Code, which excepts from required public disclosure information that is confidential by statutory law, you raise several Banking Code confidentiality provisions. For certain documents, you also raise the informer's privilege, the common-law right to privacy, and sections 552.108, 552.110, 552.111, and 552.112 of the Government Code.

At the outset, we note that the department has waived the discretionary exceptions you raise, that is, the informer's privilege, and sections 552.108 and 552.111 of the Government Code. *See* Gov't Code § 552.302; Open Records Decision Nos. 549 (1990) (informer's privilege is waivable), 515 (1988) (applicability of predecessor statute of Gov't Code § 552.111 is not compelling reason to overcome presumption of openness), 177 (1977) (predecessor statute of Gov't § 552.108 is discretionary exception). The department received the initial request for information on March 6, 1995. The requestor subsequently revised and amended this request three times. The department received

the final revision of the request on May 25, 1995, which was revised by telephone on June 5, 1995. The department did not raise these discretionary exceptions in regard to the telephone logs at issue here until October 11, 1995.

We turn to the confidentiality statutes you raise. The Seventy-fourth legislature repealed the Texas Banking Code, V.T.C.S. article 342-101 *et seq.*, see Act of May 18, 1995, 74th Leg., R.S., ch. 914, § 26, 1995 Tex. Sess. Law Serv. 4551 (Vernon), and enacted the Texas Banking Act, which includes a very broad confidentiality provision for department information, section 2.101(a), see *id.* § 1, 1995 Tex. Sess. Law Serv. at 4467. Section 2.101(a) reads as follows:

Information obtained directly or indirectly by the department relative to the financial condition or business affairs of a financial institution, or a present, former, or prospective shareholder, participant, officer, director, manager, affiliate, or service provider of a financial institution, other than the public portions of call reports and profit and loss statements, whether obtained through application, examination, or otherwise, except published statements, and all related files and records of the department are confidential and may not be disclosed by the banking commissioner or an employee of the department except as expressly provided by the banking commissioner or an employee of the department except as expressly provided otherwise by this Act or rules adopted under this Act.

We believe this provision makes confidential the bulk of the information you enclosed. While you generally redacted only the names of the financial institution that was discussed in the telephone conversation, we read the statute to cover all of the logged information about that institution, not just the name of the institution. We have marked the portions of the information that we believe are made confidential by section 2.101. We note, however, that this statute does not appear to apply to the log numbered 000046, as the information there does not seem to relate to a particular financial institution.

Some of the information is made confidential by section 20 of V.T.C.S. article 350, which reads in relevant part as follows:

All information obtained by the Banking Department from a licensee relating to the financial condition of a licensee, whether obtained through examination or otherwise, except published statements, and all files and records of the Banking Department relating to a licensee are confidential and may not be disclosed by the commissioner or an officer or employee of the Banking Department.

A "licensee" is a person licensed by the Banking Commissioner of Texas under V.T.C.S. article 350, to conduct the business of currency exchange or transmission in Texas. See V.T.C.S. art. 350, § 1(8). As with section 2.101, we read this provision to afford broad protection to records relating to a licensee as that term is defined in V.T.C.S. article 350. Thus, we believe section 20 applies to all of the information in the logs "relating to a licensee," rather than to just the names of the licensees. We note that the logs do not indicate on their face that they relate to a licensee. As you have marked these logs as protected under this provision, we will rely on your assertion that they do in fact relate to a licensee. We have marked the portions of the records to which this provision applies.

You also raise V.T.C.S. article 342.401a B(6). The Seventy-fourth Legislature repealed this provision, *see* Act of May 18, 1995, 74th Leg., R.S., ch. 914, § 26, 1995 Tex. Sess. Law Serv. 4451, 4551, (Vernon), and enacted section 4.002 of the Banking Act, *see id.* § 1, 1995 Tex. Sess. Law Serv. at 4482 (Vernon). Section 4.002 requires a proposed transferee to file under oath with the department an application for approval to acquire control of a state bank. Subsection (c) of section 4.002 provides in pertinent part as follows:

Information obtained by the banking commissioner under this section is confidential and may not be disclosed by the banking commissioner or any employee of the department . . . .

We believe "information obtained . . . under this section," refers to information obtained from a section 4.002 application. The department apparently did not obtain any information in the logs from a section 4.002 application. Thus, we do not believe this provision applies to any of the information in the telephone logs.

Finally, we believe V.T.C.S. article 548, section 8(c) applies to the information on the document numbered 000533. This provision states that

[a]ll information obtained, either directly or indirectly, by the Department relative to the financial condition of any seller whether obtained through examination or otherwise, except published statements, and all files and records of the Department relative thereto shall be confidential . . . .

The information on 000533 is obviously about the financial condition of a certain funeral home. A "seller" is defined as "a person selling, accepting funds or premiums for, or soliciting contracts for prepaid funeral benefits or contracts or policies of insurance to fund prepaid funeral benefits in this state." See V.T.C.S. art. 548b, § 1(b)(10); *see also id.* § 1(b)(9) (defining "prepaid funeral benefits"). Assuming the funeral home is a "seller" for purposes of section 1(b)(10) of V.T.C.S. article 548b, we believe the information on 000533 is confidential under article 548b, section 8(c), V.T.C.S.

We are resolving this matter with this 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 may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo  
Assistant Attorney General  
Open Records Division

KHG/rho

Ref.: ID# 36457

Enclosures: Marked documents

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