



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 18, 1998

Ms. Sammie K. Glasco
Assistant General Counsel
Texas Department of Banking
2601 N. Lamar Blvd.
Austin, Texas 78705-4294

OR98-1971

Dear Ms. Glasco:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 117620.

The Texas Department of Banking (the "department") received a request for "a complete, updated list of all Money Transfer agents and related locations of Orlandi Valuta, . . . , which are licensed through [the department] and operating in the state of Texas." In response to the request, you submit to this office for review the information which you assert is responsive. You explain that some of the requested information may be proprietary in nature and protected from disclosure by sections 552.101 and 552.110 of the Government Code. We have considered the exceptions you claim and have reviewed the information at issue.

Since the property and privacy rights of a third party may be implicated by the release of the requested information, this office notified Orlandi Valuta about the request for information. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Open Records Act in certain circumstances). The notification states that if the company does not respond within 14 days of receipt, this office will assume that the company has no privacy or property interest in the requested information. Orlandi Valuta responded to our notification stating they have "no objection to [the department] releasing any records relating to Orlandi Valuta to [the requestor], since no such records should exist." However, the department has submitted a document titled "Orlandi Valuta Agent Master

List” with the caption “Confidential Information.”¹ Since you claim section 552.110 on the company’s behalf, we will consider whether any of the information at issue is excepted from disclosure under section 552.110.

Section 552.110 protects the property interests of private persons by excepting from disclosure two categories of information: (1) “[a] trade secret” and (2) “commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision.” This office cannot conclude that information is a trade secret unless the governmental body or company has provided evidence of the factors necessary to establish a trade secret claim. Open Records Decision No. 402 (1983). Facts sufficient to show the applicability of these factors have not been provided. *See* Open Records Decision No. 363 (1983) (third party duty to establish how and why exception protects particular information). Furthermore, you have not established that releasing the requested information would likely cause Orlandi Valuta to suffer substantial competitive injury, under the commercial or financial information prong of section 552.110. Therefore, we conclude that the requested information is not excepted from disclosure pursuant to section 552.110.

We next consider whether the requested records contain information that may be confidential and excepted from disclosure under section 552.101, in conjunction with section 152.105 of the Finance Code. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. Section 152.105(a) of the Finance Code reads as follows:

(a) Except as provided by Subsection (b), information obtained by the commissioner or the commission under this chapter from a person who holds a license under this chapter or through an examination or a file or record of the department relating to that information is confidential and may not be disclosed if the information:

- (1) relates to the financial condition of the license holder; or
- (2) is proprietary information of the license holder, as determined by the commissioner.

* * *

(b) Before releasing information the commissioner determines is not proprietary under Subsection (a)(2), the commissioner shall notify the license holder.

¹We note that information is not confidential under the Open Records Act simply because the party submitting it to a governmental body anticipates or requests that it be kept confidential. Open Records Decision No. 479 (1987).

We have examined the submitted information and considered the applicability of section 152.105(a) to the submitted information. However, the submitted document does not appear to contain information "relat[ing] to the financial condition of" Orlandi Valuta. Furthermore, despite our notification pursuant to section 552.305, Orlandi Valuta asserts in their letter to this office that they have "no objection to [the department] releasing any records." Accordingly, we conclude the department may not withhold the submitted information based on section 552.101 of the Government Code. Since neither sections 552.101 nor 552.110 are applicable to the submitted document, you must release the information to the requestor.

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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive style with a large, looping initial "S".

Sam Haddad
Assistant Attorney General
Open Records Division

SH/mjc

Ref: ID# 117620

Enclosures: Submitted documents

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