



November 23, 1999

Mr. Loren E. Svor
Texas Department of Banking
2601 North Lamar Boulevard
Austin, Texas 78705-4294

OR99-3383

Dear Mr. Svor:

You have asked whether certain information is subject to required public disclosure under the Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 129261.

The Texas Department of Banking (the "department") received a request for "a list of all bankers that have been officially removed from state chartered & regulated banks in the state of Texas since 1980." In response to the request, you submit to this office for review a representative sample of the information which you assert is responsive. You claim that the requested information is excepted from required public disclosure pursuant to section 552.101 of the Government Code in conjunction with sections 31.301¹ and 35.012 of the Finance Code. We have considered the arguments and exception you raise and reviewed the submitted information.

At the outset we address your representation that since the department "does not maintain" a list as requested by the requestor, you have interpreted "the request as one for copies of documents ordering such removals, which we do maintain."² A governmental body is not expected to produce information which does not exist, nor does the act require a governmental body to prepare new information. Open Records Decision Nos. 605 (1992), 555 (1990), 362 (1983). We agree that the department is not required to provide information which is not in its possession. Open Records Decision No. 452 (1986). However, to the extent you have submitted the responsive notices, we will next address the applicable exception.

¹Section 31.301 of the Finance Code makes confidential all information concerning the financial condition or business affairs of a financial institution that is directly or indirectly obtained by the department in any manner, and all related files and records of the department.

²A governmental body must make a good faith effort to relate a request to information which it holds. Gov't Code § 552.222(b); see Open Records Decision Nos. 563 (1990), 561 (1990).

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This exception encompasses information protected by other statutes. You contend that the responsive information is confidential pursuant to section 35.012 of the Finance Code. Section 35.012 states in relevant part as follows:

A copy of a notice, correspondence, transcript, pleading, or other document in the records of the department relating to an order issued under this subchapter is confidential and may be released only as provided by Subchapter D, Chapter 31, except that the banking commissioner periodically shall publish all final removal and prohibition orders. The banking commissioner may release a final cease and desist order or information regarding the existence of the order to the public if the banking commissioner concludes that the release would enhance effective enforcement of the order. [Footnote omitted]

You state that “[t]he requirement that the commissioner publish all final removal or prohibition orders was added by Acts 1995, 74th Leg., R.S., Ch. 914, § 1.” You further assert that of “the three documents located so far, only one would seem to be in the form of a final order, with the others being in the form of a notice of intent.” Therefore, you are arguing that the “notice of intent” documents are not subject to publishing by the commissioner. As for the submitted “Notice and Order of Removal,” you also advise our office that before section 35.012 was enacted, the applicable provision made the information confidential, since “these documents were prepared under a statutory scheme that provided for strict confidentiality.”³ The applicable provision for the submitted “Notice and Order of Removal” was article 342-412, V.T.C.S., of the Texas Banking Code, which provided in part that

Orders to cease and desist, orders for removal from office, and all copies of notices, correspondence or other records in the Banking Department relating to such orders concerning such violations or unsound practices shall be confidential and shall not be publicized or revealed to the public except in any lawsuit authorized by this Code or by other lawful order or authority.

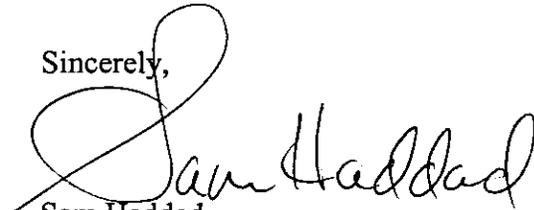
You assert that since the submitted documents were created under the “strict confidentiality” statutory scheme of article 342-412, the documents “contain a great deal of detail that could be detrimental to the reputation of the banks involved.” However, you contend that “[u]nder the present scheme, while such detail would still be included in a notice of intent . . . the final

³House Bill 1543, enacted by Act of May 18, 1995, 74th Leg., R.S., ch. 914, § 1, 1995 Tex. Sess. Law Serv. 4451, created the Texas Banking Act (the “Banking Act”) and changed former V.T.C.S art. 342-412, § 6 to V.T.C.S. art. 342-6.012. Section 6.012 was later changed to Finance Code section 35.012 in the 1997 non-substantive re-codification of the Banking Act.

order would simply be for the removal or prohibition.” Based on our interpretation of the effective date provisions of House Bill 1543, particularly section 32, we infer that the old law is to remain in effect for cases predating the new law. Under the facts presented, we conclude that the submitted information falls within the purview of the confidentiality provisions of article 342-412 of the Texas Banking Code. Thus, the department must withhold the submitted information pursuant to section 552.101 of the Government Code in conjunction with the applicable statute.

We are resolving this matter with an informal letter ruling rather than with a published open records decision.⁴ 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.

Sincerely,



Sam Haddad
Assistant Attorney General
Open Records Division

SH/nc

Ref.: ID# 129261

Encl.: Submitted documents

cc: Mr. Drew Kinzer
c/o Mr. Loren E. Svor
Texas Department of Banking
2601 North Lamar Boulevard
Austin, Texas 78705-4294
(w/o enclosures)

⁴We assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.