



December 12, 2000

Mr. Timothy K. Irvine  
General Counsel  
Texas Savings and Loan Department  
2601 North Lamar, Suite 201  
Austin, Texas 78705

OR2000-4676

Dear Mr. Irvine:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 142087.

The Texas Savings and Loan Department (the "department") states that it received a request for information relating to the Tesoro Savings and Loan Association ("Tesoro"). You assert that the requested information is excepted from disclosure under sections 552.101, 552.108 and 552.112 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e). You did not, however, submit to this office a copy of the written request for information. You also have submitted no comments or arguments in support of the section 552.108 assertion.

Pursuant to section 552.302 of the Government Code, if a governmental body fails to request a decision of this office as provided by section 552.301, the requested information is "presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information." Gov't Code § 552.302, *see also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ)

(governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Sections 552.108 and 552.112 are discretionary exceptions that do not demonstrate a compelling reason sufficient to overcome the section 552.302 presumption of openness.<sup>1</sup> Therefore, none of the information may be withheld pursuant to section 552.108 or 552.112 of the Government Code. However, this office has long held that information made confidential by law may provide a compelling reason to withhold the information sufficient to overcome the section 552.302 presumption of openness. *See, e.g.*, Open Records Decision No. 150 (1977). We therefore address the section 552.101 assertion.

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. Chapter 66 of the Finance Code establishes the procedures by which the department must regulate savings and loans associations. Section 66.111 provides that, except for certain conditions not present here, "information contained in a temporary or final supervisory order or a notice, correspondence, or other record relating to the order is confidential." The department represents that all of the submitted documents were obtained in connection with the department's exercise of its supervisory function with respect to Tesoro. Based on this representation and our review of the documents, we find the information consists of "information contained in a temporary or final supervisory order or notice, correspondence, or other record relating to the order." We have no indication that any exception to confidentiality applies in this instance. *See* Finance Code § 66.111(b), (c). We therefore conclude that the documents submitted must be withheld by the department pursuant to section 552.101 of the Government Code in conjunction with section 66.111 of the Finance Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the

---

<sup>1</sup>Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See, e.g.*, Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)); 592 at 8 (1991) (governmental body may waive section 552.104, information relating to competition or bidding); 549 at 6 (1990) (governmental body may waive informer's privilege); 522 at 4 (1989) (discretionary exceptions in general); *see also Birnbaum v. Alliance of American Insurers*, 994 S.W.2d 766, 776 (Tex. App. -- Austin, 1999, pet. filed) (governmental body may waive section 552.112).

full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

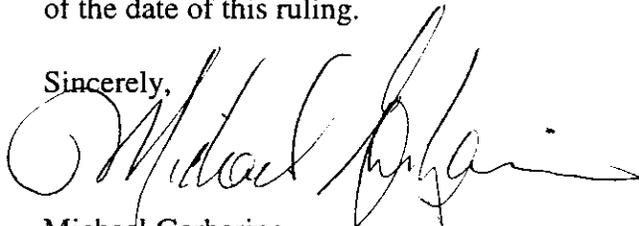
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Garbarino  
Assistant Attorney General  
Open Records Division

MG/seg

Ref: ID# 142087

Encl: Submitted documents

cc: Mr. Sean Sullivan  
c/o Timothy K. Irvine  
Texas Savings and Loan Department  
2601 North Lamar, Suite 201  
Austin, Texas 78705  
(w/o enclosures)