OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

October 9, 2001

Ms. Doreen L. Wheeler
Assistant General Counsel
Office of Consumer Credit Commissioner
2601 North Lamar Boulevard
Austin, Texas 78705

OR2001-4550

Dear Ms. Wheeler:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 153012.

The Office of Consumer Credit Commissioner (the "commissioner") received a request for a copy of a specified investigation/examination and any information relating to that investigation/examination. You claim that the submitted information is excepted from disclosure pursuant to sections 552.101 and 552.112 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted representative sample documents.[1] We have also considered comments submitted by an interested third party. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

You claim that the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 342.552 of the Finance Code.[2] Section 342.552 provides in pertinent part:

---

[1] We 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.

[2] Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses information protected by other statutes.

> (a) The commissioner or the commissioner's representative shall, at the times the commissioner considers necessary:
>
> > (1) examine each place of business of each authorized lender; and
> >
> > (2) investigate the lender's transactions, including loans, and records, including books, accounts, papers, and correspondence, to the extent the transactions and records pertain to the business regulated under this chapter.
> >
> > . . . .
>
> (d) Information obtained under this section is confidential.

Fin. Code § 342.552(a), (d). You assert that the commissioner is authorized under Chapter 342 of the Finance Code to license, supervise, and regulate certain business entities. You state that this authority empowers the commissioner to conduct regular exams and investigations of licensees. *See* Fin. Code §342.522. You also state that the submitted examination report was prepared as a result of such an examination and that the submitted documents that support the examination report were obtained by commissioner examiners from the investigated party pursuant to section 342.552. Therefore, we agree that the submitted examination report and the submitted documentation which supports and relates to the examination are confidential under section 342.522(d) of the Finance Code. Accordingly, you must withhold the submitted information from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 342.522(d) of the Finance Code. Because we base our ruling on section 552.101, we need not address your other claimed exception.

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 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

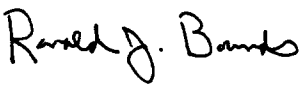
statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records 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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 153012

Enc. Submitted documents

cc: Ms. Melinda Argentieri
Mr. Matthew Argentieri
7511 Blossom Lane
Frisco, Texas 75034
(w/o enclosures)