



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 1, 2004

Ms. Sarah Shirley
Assistant General Counsel
Texas Department of Banking
2601 N. Lamar Boulevard
Austin, Texas 78705-4294

OR2004-10145

Dear Ms. Shirley:

You ask 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# 214092.

The Texas Department of Banking (the "department") received a request for information regarding a specified bank. You state that the department has released most of the requested information to the requestor. You state that, in accordance with the department's records retention schedule, some of the requested information no longer exists.¹ You claim that the remaining requested information, or portions thereof, are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure information that is made confidential by law, including information made confidential by statute, such as section 31.301(a) of the Finance Code. Section 31.301(a) holds in pertinent part as follows:

¹The Act does not require a governmental body to disclose information that did not exist at the time the request was received, nor does it require a governmental body to prepare new information in response to a request. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

not be disclosed by the banking commissioner or an employee of the department:

- (1) information directly or indirectly obtained by the department in any manner, including an application or examination, concerning 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 information in a published statement or in the public portion of a call report or profit and loss statement; and
- (2) all related files and records of the department.

You assert that none of the remaining information that you have marked is in or was obtained from a published statement or in the public portion of a call report or profit and loss statement. You further assert that the information you have marked is information relating to the financial condition or business affairs of a financial institution and of present, former, or prospective shareholders, and as such, is confidential under section 31.301. You do not indicate, nor does it appear, that other provisions in subtitle A, title 3 of the Finance Code, Chapter 11 or 12, or a rule adopted under subtitle A, title 3 of the Finance Code provide for the release of the submitted information. Upon consideration of your arguments and of the submitted information, we find that the information you have marked is confidential under section 31.301. Accordingly, the department must withhold the information you have marked from public disclosure pursuant to section 552.101 of the Government 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 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 Dep't of Pub. 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,


Marc A. Barenbrat
Assistant Attorney General
Open Records Division

MAB/ECG/krl

Ref: ID# 214092

Enc. Submitted documents

c: Ms. Beverly Jean Haiser
3445 Scrimshaw Drive
Jacksonville, Florida 32257
(w/o enclosures)