



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 6, 2005

Ms. Laurie B. Hobbs
Assistant General Counsel
Office of Consumer Credit Commissioner
2601 North Lamar Boulevard
Austin, Texas 78705

OR2005-08110

Dear Ms. Hobbs:

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# 233158.

The Office of Consumer Credit Commissioner (the "commissioner") received a request for information pertaining to ten named companies. You state that the commissioner only has information pertaining to one of the named companies.¹ You also claim that the submitted information is excepted from disclosure under sections 552.101 and 552.112 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.² We have also considered comments submitted by one of the named companies. See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

¹We note the Act does not require a governmental body to disclose information that did not exist when the request for information was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

²We 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.

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 342.552 of the Finance Code provides in relevant part the following:

(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.

Finc. Code § 342.552(a), (d). You inform us that the submitted information consists of examination reports, correspondence between the commissioner and the company at issue relating to those reports, and work papers regarding that examination. You also state that the submitted “documents supporting the examination reports were obtained from [the company at issue] by [the commissioner’s] examiners pursuant to §342.552[.]” the examination reports discuss the information obtained, and the correspondence “directly relates to the examination issues contained in the examination reports and supporting documents.” Based on these representations, we agree that the submitted information is confidential under section 342.552 of the Finance Code; therefore, the commissioner must withhold the submitted information under section 552.101 of the Government Code.³

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.

³As we are able to resolve this under section 342.552, we do not address your other argument for exception of the submitted information.

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).

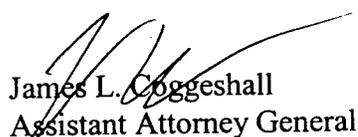
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/seg

Ref: ID# 233158

Enc. Submitted documents

c: Mr. Steven T. Wlodek
Majors & Fox, L.L.P.
401 West "A" Street, Suite 2350
San Diego, California 92101-7921
(w/o enclosures)

Ms. Andrea Levin Kim
Diamond, McCarthy, Taylor, Finley, Bryant & Lee, L.L.P.
909 Fannin, Suite 1500
Houston, Texas 77010
(w/o enclosures)