



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 26, 2006

Mr. Robert Giddings  
Assistant General Counsel  
Texas Department of Banking  
2601 North Lamar Boulevard  
Austin, Texas 78705-4294

OR2006-06732

Dear Mr. Giddings:

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# 253323.

The Texas Department of Banking (the "department") received a request for information pertaining to eight named companies and two named individuals. You state that some of the requested information has been released, but claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup>

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, including section 31.301 of the Finance Code. Section 31.301(a) provides the following:

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<sup>1</sup>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.

Except as expressly provided otherwise by this subtitle, Chapter 11 or 12, or a rule adopted under this subtitle, the following are confidential and may 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.

Fin. Code § 31.301(a). You assert that the submitted documents “consist of examination reports, correspondence between state or federal regulators regarding the trust company and progress reports submitted by the trust company and generally relate to the financial affairs or business condition of the trust company.” *See id.* § 31.301(a)(1). You inform us that no provision in subtitle A of title 3 of the Finance Code, chapter 11 or 12 of the Finance Code, or rule adopted under subtitle A of the Finance Code would provide for the release of the information. *See id.* § 31.301. You also state that the submitted information was not obtained from a published statement or the public portion of a call report or profit and loss statement. *See id.* § 31.301(a)(1). Based on these representations, we agree that the submitted information is confidential under section 31.301 of the Finance Code, and the department must withhold it under 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

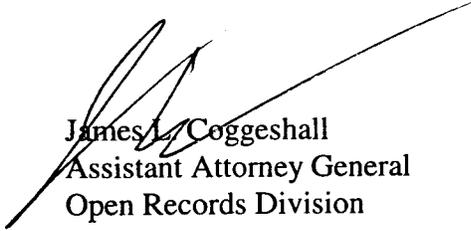
statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental 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/eb

Ref: ID# 253323

Enc. Submitted documents

c: Ms. Sarah Viren  
Corpus Christi Caller-Times  
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Corpus Christi, Texas 78401  
(w/o enclosures)