



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 14, 2008

Ms. Betsy Loar
Assistant Commissioner and General Counsel
Credit Union Department
914 East Anderson Lane
Austin, Texas 78752-1699

OR2008-09479

Dear Ms. Loar:

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# 315859.

The Texas Credit Union Department (the "department") received a request for information pertaining to the Dallas County Credit Union ("DCCU") and the Texans Credit Union ("Texans") during a specified time period.¹ You state that you have released some of the requested information to requestor. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.112 of the Government Code. Additionally, you state that release of the submitted information may implicate the proprietary interests of DCCU and Texans, and that you have notified DCCU and Texans of the request and of their opportunity to submit comments to this office as to why the requested information should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain the applicability of exception to disclose under Act in certain circumstances). We have received arguments on

¹We note that the department sought and received clarification regarding this request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

behalf of DCCU and Texans. We have considered the claimed exceptions and reviewed the submitted information, a portion of which consists of a representative sample.²

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information made confidential by other statutes. The department asserts that the submitted information is confidential pursuant to section 126.002 of the Finance Code, which provides in relevant part:

(a) Except as provided by Subsections (b) and (c), information obtained directly or indirectly by the department in any manner, including by application or examination, concerning the financial condition or business affairs of a credit union and the files and records of the department relating to that information, except a statement intended for publication, are confidential.

(b) Confidential information may not be disclosed to a member of the [credit union] commission, and a member of the commission may not be given access to the files or records of the department, except that the [credit union] commissioner may disclose to the commission information, files, and records pertinent to a hearing or matter pending before the commission or the commissioner.

(c) The commissioner may disclose the information described by Subsection (a) to a law enforcement agency or another department, agency, or instrumentality of this state, another state, or the United States if the commissioner determines that disclosure is necessary or proper to enforce the laws of this state applicable to credit unions.

Fin. Code § 126.002(a)-(c). You explain that DCCU and Texans are credit unions that are regulated and monitored by the department. You state that the information contained in Exhibit B concerns the financial condition and business affairs of DCCU and Texans and is contained in the files and records of the department. You further state that these documents were submitted by DCCU and Texans to the department in connection with applications for approvals of the merger of the two unions. You also assert that Exhibit C consists of complaints obtained by the department pertaining to the business affairs or financial condition of DCCU and Texans, and that Exhibit D consists of the examination reports and related information pertaining to DCCU and Texans. We note that the release provisions in

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.

subsections 126.002(b) and (c) are not applicable in this instance. *See id.* § 126.002(b)-(c). Therefore, based on your representations and our review, we conclude that the submitted information is confidential pursuant to section 126.002(a) of the Finance Code and must be withheld 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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 challenge 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.

³As our ruling is dispositive, we need not address any of the remaining arguments against disclosure.

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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/eb

Ref: ID# 315859

Enc. Submitted documents

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