



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

September 15, 2008

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

OR2008-12648

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# 321628.

The Texas Credit Union Department (the "department") received a request for information pertaining to recent applicants for a credit union charter.¹ You inform us that the department does not have any documents responsive to part of the request.² 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 Allied Credit Union ("Allied"), Bluebonnet Credit Union ("Bluebonnet"), Coastal Community and Teachers Credit Union ("Coastal"), EDS Credit Union ("EDS"), Light Commerce Credit Union ("Light Commerce"), My Credit Union ("My"), New Mount Zion Baptist Church Credit Union ("New Mount Zion"), NCI Community Development Credit Union ("NCI"), Qualtrust Credit Union ("Qualtrust"), and Pamela A. Williams and that you have notified these third parties 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

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).

²The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

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 comments from EDS, My, and NCI. We have considered the claimed exceptions and reviewed the submitted information.³

Section 552.101 of the Government Code 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 state that the information contained in Exhibit B concerns the financial condition and business affairs of prospective or existing credit unions and is contained in the files and records of the department. You further state that these documents were submitted by Allied, Bluebonnet, Coastal, New Mount Zion, Qualtrust, Light Commerce, EDS, My, NCI and Pamela A. Williams to the department as part of the application process. Furthermore, the information at issue indicates that the release

³ 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.

provisions in 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, except as we have marked for release, 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.⁴ However, the information pertaining to Pamela A. Williams consists of documents related to an application to incorporate a credit union that was subsequently withdrawn. A “credit union” is defined as “a voluntary, cooperative, nonprofit financial institution authorized to do business in this state *under this subtitle*[.]” *Id.* §121.002(2) (emphasis added). Section 122.008 of the Finance Code states that a credit union’s existence begins upon the issuance of a certificate of incorporation. *See id.* § 122.008; *see also id.* § 122.001; 7 T.A.C. § 91.201 (describing credit union incorporation procedures). Upon review, we determine that the remaining information at issue does not pertain to a “credit union” for purposes of section 126.002; therefore we conclude that this information does not concern the financial condition or business affairs of a credit union for purposes of the Finance Code. Consequently, we find that the department may not withhold any of the remaining information, which we have marked for release, under section 552.101 in conjunction with section 126.002 of the Finance Code.

You also assert that the remaining information is excepted from disclosure under section 552.112 of the Government Code. Section 552.112 excepts from disclosure “information contained in or relating to examination, operating, or condition reports prepared by or for an agency responsible for the regulation or supervision of financial institutions or securities, or both.” Gov’t Code § 552.112(a). You state that the department is responsible for the regulation and supervision of credit unions and that a credit union applying for a charter “is required to provide reports concerning its financial condition and operations[.]” However, upon review, we find that you have not adequately explained or otherwise demonstrated that the information pertaining to the application for a credit union charter that was withdrawn is “contained in or relat[es] to examination, operating, or condition reports prepared by or for” the department. *See* Open Records Decision No. 194 (1978) (statutory predecessor to Gov’t Code § 552.112 not applicable to financial information in a pawnshop license application submitted to the Consumer Credit Commission because it is not an “examination, operating, or condition report.”) Therefore, we determine that no portion of the remaining information may be withheld under section 552.112(a).

Lastly, we note that an interested third party is allowed ten business days after the date of its receipt of the governmental body’s notice under section 552.305(d) to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See* Gov’t Code § 552.305(d)(2)(B). As of the date of this letter, Pamela A. Williams has not submitted to this office any reasons explaining why the requested information should not be released. We thus have no basis for concluding that any portion of the submitted information

⁴As our ruling is dispositive, we need not address any of the remaining arguments against disclosure of this information.

constitutes proprietary information of this third party, and the department may not withhold any portion of the submitted information on that basis. *See* Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3.

In summary, except as we have marked for release, the department must withhold the submitted information under section 552.101 in conjunction with section 126.002(a) of the Finance 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 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.

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,



Paige Savoie
Assistant Attorney General
Open Records Division

PS/ma

Ref: ID# 321628

Enc. Submitted documents

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c/o Ms. Betsy Loar
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