



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

March 18, 2009

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

OR2009-03544

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# 336318.

The Office of Consumer Credit Commissioner (the "commissioner") received a request for the complaint file and audit results of Mr. Bill Motor Co., Ltd. ("Mr. Bill"). You state the commissioner has released some of the responsive information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.112 of the Government Code. You also state release of the submitted information may implicate the proprietary interest of Mr. Bill. You state, and provide documentation showing, you have notified Mr. Bill of the request and of its 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 comments from Mr. Bill. We have considered the submitted arguments and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential, including section 348.514 of the Finance Code, which provides in part:

- (a) At the times the commissioner considers necessary, the commissioner or the commissioner's representative shall:
 - (1) examine each place of business of each license holder; and

(2) investigate the license holder's transactions and records, including books, accounts, papers, and correspondence, to the extent the transactions and records pertain to the business regulated under this chapter.

(b) The license holder shall

(1) give the commissioner or the commissioner's representative free access to the license holder's office, place of business, files, safes, and vaults; and

(2) allow the commissioner or the commissioner's representative to make a copy of an item that may be investigated under Subsection (a)(2).

(d) Information obtained under this section is confidential.

Fin. Code § 348.514(a)-(b), (d). The commissioner asserts the information submitted as Attachment E and certain dates marked in Attachment F are confidential under section 348.514. The commissioner states Attachment E is a report of an examination of Mr. Bill pursuant to section 348.514 and the dates marked in Attachment F are the dates of the examination. Having considered the commissioner's arguments and reviewed the information at issue, we conclude some of the information in Attachment E constitutes "[i]nformation obtained under [section 348.514.]" *Id.* § 348.514(d). Accordingly, the commissioner must withhold the information we have marked in Attachment E under section 552.101 of the Government Code in conjunction with section 348.514 of the Finance Code. We find, however, the commissioner has not sufficiently demonstrated that any of the remaining information in Attachment E or the marked dates in Attachment F fall within the scope of section 348.514(d). Therefore, none of the remaining information is confidential under section 348.514 of the Finance Code, and the commissioner may not withhold any of the remaining information on that basis under section 552.101 of the Government Code. *See also* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express, and confidentiality requirement will not be implied from statutory structure), 649 at 3 (1996) (language of confidentiality provision controls scope of its protection), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to public).

Next, the commissioner raises section 552.112 of the Government Code. Section 552.112(a) 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. An entity must be a "financial institution" for its examination, operating, or condition reports to be excepted by section 552.112; it is not sufficient that the entity is regulated by an agency that regulates or

supervises financial institutions. Open Records Decision No. 158 at 4-5 (1977). You contend the remaining information is an examination or condition report prepared by the commissioner. You have not demonstrated, however, and it does not otherwise appear to this office that the remaining information relates to a "financial institution" for the purpose of section 552.112. See Bus. Org. Code § 23.051(2) (defining "financial institution"); ORD 158 (overruled by *Birnbaum v. Alliance of American Insurers*, 994 S.W.2d 766 (Tex. App.—Austin 1999, pet. denied), to the extent it held insurance companies are "financial institutions" for purposes of section 552.112 based on the statutory predecessor to Bus. Org. Code § 23.051(2)). Therefore, no portion of the remaining information may be withheld under section 552.112 of the Government Code.

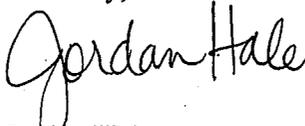
Finally, Mr. Bill states it objects to release of its records. However, Mr. Bill does not raise any exceptions to disclosure. Therefore, the commissioner may not withhold any portion of the remaining information on the basis of any proprietary interest that Mr. Bill may have in it. See Gov't Code §§ 552.301, .302.

In summary, the commissioner must withhold the information that we have marked in Attachment E under section 552.101 of the Government Code in conjunction with section 348.514 of the Finance Code. As the commissioner and Mr. Bill raise no other arguments against disclosure, the remaining information must be released to the requestor.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Jordan Hale
Assistant Attorney General
Open Records Division

JH/jb

Ref: ID# 336318

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

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Mr. Bill Motor Co., Ltd.
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Arlington, Texas 76013
(w/o enclosures)