



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 17, 2009

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

OR2009-11495

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# 350978.

The Texas Credit Union Department (the "department") received a request for all documents related to West Texas Credit Union (the "credit union"), including any audits or investigatory documents.¹ You state the department has released some of the requested information to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.110, 552.111, 552.112, and 552.136 of the Government Code. You also state that the information at issue may contain proprietary information subject to exception under the Act. Accordingly, you provide documentation showing that the department notified the credit union of the request for information and of its rights to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). The credit union has responded to this notice and argues that the submitted information is excepted under

¹You indicate that the requestor's representative limited the request to information created after January 1, 2001. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if a large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

sections 552.101 and 552.110. We have considered the submitted arguments and reviewed the submitted representative sample of information.²

Initially, we note that some of the submitted information was not in existence when the department received the present request for information and thus is not responsive to the request. We further note that the information we have marked was created before the time period specified by the requestor and is also not responsive to the request. This decision does not address the public availability of the non-responsive information, which we have marked, and the department need not release that information to the requestor.

Next, we note that the requestor in this instance is Senator Eliot Shapleigh, a member of the State Legislature. Section 552.008 of the Government Code grants access to information, including confidential information, requested by individual members, agencies, or committees of the Texas Legislature, and provides as follows:

(a) This chapter does not grant authority to withhold information from individual members, agencies, or committees of the legislature to use for legislative purposes.

(b) A governmental body on request by an individual member, agency, or committee of the legislature shall provide public information, including confidential information, to the requesting member, agency, or committee for inspection or duplication in accordance with this chapter if the requesting member, agency or committee states that the public information is requested under this chapter for legislative purposes. A governmental body, by providing public information under this section that is confidential or otherwise excepted from required disclosure under law, does not waive or affect the confidentiality of the information for purposes of state or federal law or waive the right to assert exceptions to required disclosure of the information in the future. The governmental body may require the requesting individual member of the legislature, the requesting legislative agency or committee, or the members or employees of the requesting entity who will view or handle information that is received under this section and that is confidential under law to sign a confidentiality agreement that covers the information and requires that:

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.

- (1) the information not be disclosed outside the requesting entity, or within the requesting entity for purposes other than the purpose for which it was received;
- (2) the information be labeled as confidential;
- (3) the information be kept securely; or
- (4) the number of copies made of the information or the notes taken from the information that implicate the confidential nature of the information be controlled, with all copies or notes that are not destroyed or returned to the governmental body remaining confidential and subject to the confidentiality agreement.

(c) This section does not affect:

- (1) the right of an individual member, agency, or committee of the legislature to obtain information from a governmental body under other law, including under the rules of either house of the legislature;
- (2) the procedures under which the information is obtained under other law; or
- (3) the use that may be made of the information obtained under other law.

Gov't Code § 552.008. In this instance, Senator Shapleigh states that he is requesting the submitted information "under the legislative purpose special right of access in Section 552.008 of the Texas Government Code." Thus, section 552.008 is applicable to the submitted information. You claim the submitted information is confidential under federal law and argue that "to the extent there is a conflict, the federal law preempts state law." Although portions of the submitted information would be confidential with regard to the general public under the various provisions of law cited by the department, we determine that the transfer of information pursuant to section 552.008 does not amount to public disclosure of the information at issue. *Cf.* Open Records Decision No. 666 (municipality's disclosure to a municipally-appointed citizen advisory board does not constitute a release to the public); Attorney General Opinion JM-119 (1983) (statutory predecessor) (for purposes of the Act, official of a governmental body who, in an official capacity, requests information held by the governmental body, does not act as a member of the public in doing so). We further note that section 552.008 permits a governmental body to require a member of the legislature to sign a confidentiality agreement for the protection of information obtained pursuant to this section. *See id.* § 552.008(b). In addition, the release of the information at issue under section 552.008 does not waive or affect the confidentiality of the information for purposes

of state or federal law or waive the department's right to assert exceptions to required public disclosure of this information in the future. *See id.*; *see also id.* § 552.352. Upon review, therefore, we conclude that the department must provide the requested information to the requestor in accordance with section 552.008 of the Government Code. *See id.* § 552.008(b). Because we make our determination under section 552.008, we need not address the submitted arguments.

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,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/rl

Ref: ID# 350978

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)