



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 20, 2012

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

OR2012-09459

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# 456810.

The Texas Department of Banking (the "department") received a request for four categories of information pertaining to Macquarie Bank Limited ("Macquarie"). You state the department has released some information to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.112, 552.136, and 552.147 of the Government Code. You also inform us release of the submitted information may implicate the proprietary interests of Macquarie. Accordingly, you notified Macquarie of the request for information and of its right to submit arguments to this office as to why its submitted information 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). We have received comments from an attorney for Macquarie. We have considered the submitted arguments and reviewed the submitted representative sample of information.¹

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

¹We assume the "representative sample" of information 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 those records contain substantially different types of information than those 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, officer, director, 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 state the information you have marked consists of documents obtained or created by the department that concern the financial conditions and business affairs of Macquarie. You demonstrate that Macquarie qualifies as a financial institution as defined by the Finance Code. *See id.* § 31.002(a)(25). You indicate 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 state that the information you have marked 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 information you have marked is confidential under section 31.301 of the Finance Code, and the department must withhold it under section 552.101 of the Government Code.²

Section 552.136 of the Government Code states “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136. Section 552.136(a) defines “access device” as “a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* § 552.136(a). We note check numbers are not access device numbers for purposes of section 552.136. Thus, the department may not withhold the check number you have marked, which we have marked for release, under section 552.136. However, the department must withhold the bank account and routing number you have marked under section 552.136 of the Government Code.

²As our ruling is dispositive for this information, we need not address the remaining arguments against its disclosure.

Section 552.137 of the Government Code provides that “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act],” unless the owner of the e-mail address has affirmatively consented to its release or the e-mail address is specifically excluded by subsection (c). Gov’t Code § 552.137(a)-(c). Upon review, we find the e-mail addresses we have marked are not of the types specifically excluded by section 552.137(c) of the Government Code. Accordingly, the department must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consents to disclosure.³

In summary, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 31.301 of the Finance Code. The department must withhold the bank account and routing number you have marked under section 552.136 of the Government Code. The department must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consents to disclosure. The department must release the remaining information.

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, toll free at (888) 672-6787.

Sincerely,



Sean Nottingham
Assistant Attorney General
Open Records Division

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³We note Open Records Decision No. 684 (2009) is a previous determination authorizing all governmental bodies to withhold ten categories of information, including e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

Ref: ID# 456810

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)