



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 28, 2012

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

OR2012-10020

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# 457695.

The Texas Credit Union Department (the "department") received a request for nine categories of information pertaining to the Credit Union of Texas (the "credit union") and Centrix Financial, LLC.¹ You state the department does not possess information responsive to two categories of the request.² You state the department has released non-confidential records in response to the request. You claim the remaining requested information is excepted from disclosure under sections 552.101 and 552.112 of the Government Code. Additionally, you state release of the information at issue may implicate the proprietary interests of the credit union. Accordingly, you state, and provide documentation showing, you notified the credit union of the request for information and of its right to submit arguments to this office as to why the information at issue should not be released. *See Gov't*

¹You state the department sought and received clarification of the request for information. *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).

²We note the Act does not require a governmental body to release information that did not exist when a request for information was received, obtain information that is not held by the governmental body or on its behalf, or prepare new information in response to a request. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed).

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 the credit union. We have considered the submitted arguments and reviewed the submitted representative sample of information.³ We have also received and considered comments from the National Credit Union Administration (the "NCUA"). *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

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 office has repeatedly held that the transfer of confidential information between governmental agencies does not destroy the confidentiality of that information. *See, e.g.*, Attorney General Opinions H-917 (1976), H-836 (1974), Open Records Decision Nos. 561 (1990), 414 (1984), 272 (1981). These opinions recognize the need to maintain an unrestricted flow of information between state agencies. In Open Records Decision No. 561, we considered whether the same rule applied regarding information deemed confidential by a federal agency. In that decision, we noted the general rule that chapter 552 of the United States Code, the federal Freedom of Information Act, applies only to federal agencies and does not apply to records held by state agencies. *See* ORD 561 at 6. Further, we stated that information is not confidential when in the hands of a Texas agency simply because the same information is confidential in the hands of a federal agency. *Id.* However, in the interests of comity between state and federal authorities and to ensure the flow of information from federal agencies to Texas governmental bodies, we concluded that: "when information in the possession of a federal agency is 'deemed confidential' by federal law, such confidentiality is not destroyed by the sharing of the information with a governmental body in Texas. In such an instance, [section 552.101] requires a local government to respect the confidentiality imposed on the information by federal law." *Id.* at 7.

In this instance, you inform us portions of the submitted information were provided to the department by the NCUA. The department asserts that the NCUA considers this information confidential. The NCUA, in its brief to our office, states that the information at issue is confidential pursuant to section 792.31 of title 12 of the Code of Federal Regulations. *See* 12 C.F.R. § 792.31 (providing that copies of reports of examination and other documents, papers, or information provided by the administration to governmental agencies and insured financial institutions remain the property of the administration, and no person, agency, or employee shall disclose the reports or exempt records without the administration's express written authorization). Therefore, we conclude that the department must withhold the

³We assume 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 those records contain substantially different types of information than that submitted to this office.

portion of the submitted information provided to the department by the NCUA under section 552.101 of the Government Code in conjunction with federal law.

Section 552.101 also encompasses 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). The credit union, in its brief to our office, states it is chartered under the laws of the State of Texas and is subject to regulation by the department. You explain the remaining information at issue consists of examination reports, e-mails, and correspondence between the department and the credit union concerning the financial condition or business affairs of a credit union. You state that the release provisions in subsections 126.002(b) and (c) are not applicable in this instance. *See id.* § 126.002(b)-(c). Based on your representations and our review, we conclude that the remaining information is confidential pursuant to section 126.002(a) of the Finance Code. Thus, the department must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 126.002(a) of the Finance Code.⁴

In summary, the department must withhold the information provided to the department by the NCUA under section 552.101 of the Government Code in conjunction with federal law.

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

The department must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 126.002(a) of the Finance Code.

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,



Benjamin A. Bellomy
Assistant Attorney General
Open Records Division

BAB/dls

Ref: ID# 457695

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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