

**Texas Department of Banking**

Kenneth W. Littlefield  
Commissioner

RO-56

ID# 11841 TP GOV

March 7, 1991

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Opinion Committee

Attn: Open Records Division

The Honorable Dan Morales  
Attorney General of Texas  
P. O. Box 15428 Capital Station  
Austin, Texas 78711

Re: Open Records Act Request - Investors Trust Inc. Financial Statements and Related Information

Dear General Morales:

I am enclosing an open records act request from dated February 27, 1991, received by the Department of Banking on February 28, 1991.

Trust companies are required by Article 342-1103 of the Texas Banking Code to file an annual statement of condition on the previous December 31st, and to publish such statement in a newspaper of general circulation in the county in which the trust company is located. Article 342-209, made applicable to trust companies by Article 342-1102, requires a trust company to make and publish a statement of its financial condition on a quarterly basis.

Article 342-210 of the Texas Banking Code, made applicable to trust companies by Article 342-1102, makes confidential all information obtained, either directly or indirectly, by the Banking Department relative to the financial condition of a trust company other than call reports (Reports of Condition), profit and loss statements and published statements.

A sample of each document which a trust company submits in response to a "call" under Article 342-209 or 342-1102 is attached. The documents consist of a "Quarterly Trust Company Report of Condition", including "Schedule A - Report of Trust Assets" (Exhibits A-1 and A-2); the "Quarterly Trust Company Report of Income" (Exhibit B) and the newspaper publication and "Affidavit of Publication" submitted by the trust company (Exhibits C-1 and C-2).

The Department will address its concerns in connection with each Exhibit as follows:

Exhibit A-1 - This document is "a statement of financial condition" which is published in the newspaper by the trust company. As you will note, Exhibit A-1 is identical to Exhibit C, the newspaper notice. Therefore, Exhibit A-1 constitutes a "statement of

ACCOMPANIED BY ENCLOSURES -  
FILED SEPARATELY

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financial condition" which is "published" as required by Article 342-209 and exempted from confidentiality as a "published statement" by Article 342-210. Consequently, the Department has disclosed Exhibit A-1 in response to the request.

Exhibit A-2 and Exhibit B - Exhibit A-2 and Exhibit B are clearly information related to the published financial statements and are subject to disclosure unless exempted from disclosure by a provision of the Act. As these documents are not published in response to Article 342-209, they are not "statements of financial condition" which are "published" pursuant to Article 342-209. Exhibit A-2 and Exhibit A constitute information relative to the financial condition of the trust company and are confidential pursuant to Article 342-210 (and therefore exempt from disclosure by Section 3(a)(1) of the Act) unless they are "call reports" or "profit and loss statements." The Department is uncertain whether these documents contain "call reports" or "profit and loss statements" and has not disclosed them in response to the request.

Exhibit C - This document is clearly a "statement of financial condition" which is "published" pursuant to Article 342-209 and therefore is exempted from confidentiality as a "published statement" pursuant to Article 342-210. This document has been disclosed to the inquirer.

Section 14(a) of Article 6252-17a states that the Act "does not prohibit any governmental body from voluntarily making part or all of its records available to the public, unless expressly prohibited by law". The Department is uncertain whether Exhibit A-1 and Exhibit B are made confidential by Article 342-210 of the Texas Banking Code or are exempted by any of the provisions of that Article. The Department is concerned in this instance with incurring the severe penalties provided by Article 342-211 of the Texas Banking Code should it disclose information which is confidential. The Department therefore requests the Attorney General's opinion whether Exhibit A-2 and Exhibit B are subject to or exempted from confidentiality under Article 342-210, and consequently, whether they should be disclosed in response to the request.

Thank you for your assistance in this matter. If you have any questions or need further information, please contact Cynthia N. Milne, Assistant General Counsel, at the Department.

Sincerely,

  
Kenneth W. Littlefield  
Commissioner of Banking

KWL/CNM/shc

Enclosures

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