



The Attorney General of Texas

April 16, 1980

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Honorable Robert E. Stewart
Commissioner
Department of Banking
2601 North Lamar
Austin, Texas 78705

Open Records Decision No. 240

Re: Whether records relating to correspondence received by the Department of Banking alleging manipulation of securities pledged as collateral for a bank loan are public under the Open Records Act.

Dear Mr. Stewart:

You have requested our decision under the Open Records Act, article 6252-17a, V.T.C.S., as to whether certain records of the Department of Banking are available to the public.

In July, 1979, an officer of a private bank in Galveston, by letter addressed to a regional director of the Department of Banking, made allegations that a member of the legislature had been involved in the manipulation of securities pledged as collateral for a bank loan. By letter of July 24, 1979, an examiner for the Department addressed a letter to the appropriate regional examiner, advising him to look into the matter. Subsequently, on October 25, 1979, the bank in question issued a public statement declaring, inter alia, that the legislator was the subject of an investigation by the State Banking Board. The following day, the Commissioner of Banking wrote to the legislator to assure him that he was not the subject of any such investigation, either by the Board or by the Department of Banking. The bank has now requested copies of both the intra-departmental letter of July 24 and the October 26 letter from the Commissioner to the legislator.

The first of these letters is excepted from disclosure by section 3(a)(11) of the Open Records Act, as

inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than one in litigation with the agency.

The July 24 letter consists of instructions, advice and recommendations, the precise type of information this office has long held to be confidential. Attorney General Opinion H-436 (1974); Open Records Decision Nos. 174 (1977); 128 (1976); 86 (1975). We conclude that the letter of July 24, 1979, from the departmental examiner to the regional examiner is excepted from disclosure by section 3(a)(11) of the Act.

As to the letter of October 26 from the Banking Commissioner to the legislator, you have suggested that it is made confidential by section 3(a)(12), which excepts

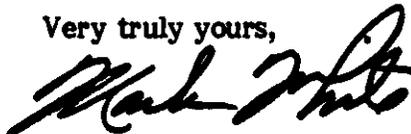
information contained in or related to examination, operating, or condition reports prepared by, or on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions, and/or securities, as that term is defined in the Texas Securities Act;

or, alternatively, by section 3(a)(1), which excepts "information deemed confidential by law. . . ." The law to which you refer us here is article 342-210, V.T.C.S., which provides that

all information obtained by the Banking Department relative to the financial condition of state banks, . . . and all files and records of said Department relative thereto shall be confidential. . . .

As we have indicated, the October 26 letter is merely a denial by the Commissioner that the legislator is a subject of investigation by the Department of Banking, together with a brief explanation of what matters the Department may investigate and that its investigative authority is inapplicable to the charges made against the legislator. In our opinion, there is nothing contained in this letter which may fairly be said to constitute "examination, operating, or condition reports" of a financial institution. Nor does the letter contain any information which is "relative to the financial condition" of a state bank. As a result, we do not believe that the letter is confidential under either 3(a)(12) or 3(a)(1). Thus, it is our opinion that the letter of October 26, 1979, from the Commissioner of Banking to the legislator who is the subject of this inquiry is not excepted from disclosure under any provisions of the Open Records Act.

Very truly yours,



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APPROVED:
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