



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

November 14, 1989

Mr. John R. Hale
Commissioner
Credit Union Department
914 East Anderson Lane
Austin, Texas 78752-1699

Dear Mr. Hale:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 7337; this decision is OR89-375.

Under the Open Records Act, all information held by governmental bodies is open unless the information falls within one of the act's specific exceptions to disclosure. Attorney General Opinion H-436 (1974). The act places on the custodian of records the burden of proving that records are excepted from public disclosure. If a governmental body fails to claim an exception, the exception is ordinarily waived unless the information is deemed confidential under the act. See Attorney General Opinion JM-672 (1987). The act does not require this office to raise and consider exceptions that you have not raised.

The Credit Union Department received an open records request for files, documents and correspondence relating to applications by credit unions for bylaw amendments that have been submitted to the department within the last five years, as well as for the department's actions or responses to these applications.

The Credit Union Department seeks to withhold the requested information from required public disclosure under sections 3(a)(1) and 3(a)(12) of the Open Records Act.

Section 3(a)(1) excepts from required public disclosure information deemed confidential by law, whether constitutional, statutory, or by judicial decision. The Credit Union Department claims that article 2461-11.12(b), V.T.C.S., deems confidential the information contained in

Mr. John R. Hale
November 14, 1989
Page 2

the Credit Union Department's files, including the information on these applications.

Article 2461-11.12(b) provides as follows:

(b) All information, except statements intended for publication, obtained by the department relative to the financial conditions of credit unions, whether obtained through examination or otherwise, and all files and records of the department relative to that information are confidential and not for public record or inspection. The commissioner may disclose to the commission any information, files, or records pertinent to any hearing or matter pending before the commissioner or the commission. If the commissioner determines it is necessary or proper for the enforcement of the laws of this state applicable to credit unions or rules adopted under those laws, the commissioner may disclose any files, records, or other information of the department to the Texas Share Guaranty Credit Union or any department, agency, or instrumentality of this state or the United States.

The quoted provision relates to information obtained during periodic examinations required by the department to be performed by an appointed examiner under article 2461-11.12(a). The bill analysis prepared for the bill adding article 2461-11.12(b) states that this provision makes confidential "such records relevant to credit union examinations." Bill Analysis, H.B. 1399, 67th Leg. (1981).

The information you have submitted falls outside the scope of the confidentiality provision of article 2461-11.12, since it does not comprise information obtained during the examination of the credit union by appointed examiners. Thus, the information is not protected from disclosure under section 3(a)(1) as information deemed confidential by law.

Section 3(a)(12) excepts from required public disclosure

information contained in or related to examination, operating or condition reports prepared by, on behalf of, or for the use of

Mr. John R. Hale
November 14, 1989
Page 3

an agency responsible for the regulation or supervision of financial institutions, and/or securities

Included in the documents you have submitted to this office for review is information relating to future marketing plans, estimated future capital expenditures, and details of current expenditures, including credit union employee salaries and operating costs. This information is protected under section 3(a)(12) of the act. See Open Records Decision Nos. 187 (1978) (detailed property development plans of a credit union excepted); 28 (1974) (current balance sheet and number of members excepted from disclosure). We have marked on the documents you have submitted the information that may be withheld.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR89-375.

Yours very truly,

*Open Government Section
of the Opinion Committee*

Open Government Section
of the Opinion Committee
Prepared by David A. Newton
Assistant Attorney General

DAN/le

Ref.: ID# 7337

Enclosure: Marked Documents

cc: Mr. Jerry Nugent
Rinehart & Nugent
Attorneys at Law
1000 M Bank Tower
221 W. 6th Street
Austin, Texas 78701