



Office of the Attorney General

State of Texas

September 23, 1992

DAN MORALES
ATTORNEY GENERAL

Mr. Brian R. Herrick
Assistant General Counsel
Texas Department of Banking
2601 N. Lamar Boulevard
Austin, Texas 78705-4294

OR92-564

Dear Mr. Herrick:

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# 16893.

The Texas Department of Banking (the "department") has received a request for access to the external auditors' opinions in certain annual reports or directors' reports of state banks filed with the department. You assert that section 3(a)(1) of the Open Records Act in conjunction with subsection (a) of article 342-210, V.T.C.S., excepts the requested information from required public disclosure under the Open Records Act.

Section 3(a)(1) of the act excepts information made confidential by statutory law. Subsection (a) of article 342-210 provides in pertinent part that

all information obtained, either directly or indirectly, by the Banking Department relative to the financial condition of any bank . . . *other than call reports and profit and loss statements*, whether obtained through examination or otherwise, except *published statements*, and all files and records of said Department relative thereto shall be confidential." [Emphasis added.]

Article 342-209 provides that the Banking Commissioner is to "*call* upon each state bank four times each year to make and *publish* a statement of its financial condition" in the form the Banking Commissioner (the "commissioner") prescribes. *See* V.T.C.S. art. 342-201 (providing for commissioner's appointment). You advise that

the reference to "published statements" in article 342-210 is to the called statements of financial condition that each state bank must publish quarterly in accordance with article 342-209 and that the requested information is not part of such published statements.

The legislative history of article 342-210 supports this construction of the phrase "published statements." In 1983, the legislature excepted from article 342-210 "call reports and profit and loss statements." Acts 1983, 68th Leg., ch. 499, at 2924. Prior to that time, only "published statements" were excluded from the scope of the confidentiality provision in article 342-210. Then, as now, article 342-209 required each state bank to publish periodic statements of financial condition, also referred to therein as "called statements." Clearly, the reference in article 342-210 to "published statements" prior to its amendment in 1983 was to the called statements required to be published by article 342-209.¹

We found no indication in the history of the 1983 amendments that the legislature intended to modify the meaning of "published statements" in 1983 when it added the exclusion for "call reports." We also found no indication in that history that the legislature intended "call reports" to mean anything other than the called statements required to be published under article 342-2109. Consequently, we conclude that the phrases "published statements" and "call reports" both refer to the called statements of financial condition required to be published by article 342-209. You have indicated that the form required by the commissioner for called statements of financial condition does not require publication of a related auditor's opinion. Thus, the exceptions from confidentiality for "published statements" and "call reports" in article 342-210 do not apply to the requested information.

We turn next to the exception from confidentiality in article 342-209 for "profit and loss statements." The phrase "profit and loss statement" is also not defined by article 342-210 or by any other provision of the Texas Banking Code. Consequently, we must interpret the phrase according to its commonly understood meaning. Gov't Code §§ 311.01, 312.002. The phrase "profit and loss statement" is generally defined as a financial statement of a business showing the business' revenues and expenses for a given period. See WEBSTER'S THIRD NEW INT. DICTIONARY 1143, 1811 (1969) (defining income statement and profit and loss

¹Neither article 342-210 nor any other provision of the Banking Code defines "published statements" or "call reports."

statement similarly); BLACK'S LAW DICTIONARY 763, 1211 (1990) (also defining income statement and profit and loss statement similarly). As generally defined the phrase does not encompass a related auditor's opinion, and consequently, we conclude that the requested information is not within the scope of the exception from confidentiality provided "profit and loss statements."

In summary, the requested information is confidential and must be withheld pursuant to article 342-210 of the Banking Code since that article's exclusions from confidentiality for "call reports," "published statements," and "profit and loss statements" are not applicable here. If you have questions about this ruling, please refer to OR92-564.

Yours very truly,



Celeste A. Baker
Assistant Attorney General
Opinion Committee

CAB/lmm

Ref.: ID# 16893

Enclosure: Submitted documents

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