



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 19, 1994

Mr. Allo B. Crow, Jr.
Office of Consumer Credit Commissioner
2601 North Lamar Blvd.
Austin, Texas 78705-4207

OR94-562

Dear Mr. Crow:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 27465.

The Office of Consumer Credit Commissioner ("OCCC") received a request for "copies of your investigative findings and/or report generated as a result of the Office of Consumer Credit Commissioner investigating Beneficial Texas, Inc., specifically as it relates to Maria L. Gallardo arising out of a loan originating in the Corpus Christi office of Beneficial on October 24, 1991." You enclosed as responsive to this request copies of the examiner's report, all correspondence pertaining to this matter, as well as the examiner's work papers and copies of documents that he obtained at Beneficial Finance Company. We note that the investigation was apparently initiated because the OCCC received a complaint against the Beneficial Finance Company.

You raise no exception to the release of the requested information. Section 552.101 of the Government Code excepts from required public disclosure information considered to be confidential by law. This office may raise section 552.101 of the Government Code on behalf of a governmental body. See Open Records Decision Nos. 344; 325 (1982). You enclosed a copy of V.T.C.S. article 5069-3.08. We, therefore, have considered whether section 552.101 in conjunction with V.T.C.S. article 5069-3.08 excepts the requested information. We conclude that it does not. See Open Records Decision No. 392 (1983) (copy enclosed). However, we find that much of the information is excepted from required public disclosure under section 552.101 of the Government Code in conjunction with common-law privacy.

V.T.C.S. article 5069-3.08 requires the OCCC to periodically examine each loan company's place of business and makes confidential information the OCCC obtains during such examination. The statute provides in part as follows:

At such times as the Commissioner shall deem necessary, the Commissioner, or his duly authorized representative shall make an examination of the place of business of each authorized lender and shall inquire into and examine the loans, transactions, books, accounts, papers, correspondence, and records of such lender insofar as they pertain to the business regulated by this Chapter. In the course of such examination, the Commissioner or his duly authorized representative shall have free access to the office, place of business, files, safes and vaults of such lender, and shall have the right to make copies of such books, accounts, papers, *correspondence and records*. The Commissioner or his duly authorized representative may, during the course of such examination, administer oaths and examine any person under oath upon any subject pertinent to any matter about which the Commissioner is authorized or required by this Chapter to consider, investigate, or secure information. Any authorized lender who shall fail or refuse to let the Commissioner or his duly authorized representative examine or make copies of such books, or other relevant material shall thereby be deemed in violation of this Chapter and such failure or refusal shall constitute grounds for the suspension or revocation of the lender's license. *The information obtained in the course of such examination shall be confidential. . . .* (emphasis added)

The confidentiality provision of V.T.C.S. article 5069-3.08 is expressly applicable only to information obtained pursuant to an article 5069-3.08 examination. *Id.* at 6. We must determine whether the information at issue was obtained during an examination conducted pursuant to article 5069-3.08.

An article 5069-3.08 examination is an examination of the place of business of a lending company in which the examiner conducts a complete examination of all of the transactions and records of a loan company. *See id.* at 5. An article 5069-3.08 examination does not encompass an investigation of one complaint against a lending company. *See id.* The requested information here concerns a complaint about one specific loan transaction, rather than information obtained during an examination of all of the transactions and records of the company. *See id.* Therefore, the OCCC investigator did not obtain the information at issue pursuant to V.T.C.S. article 5069-3.08.

The requested information appears to have been obtained during an investigation conducted pursuant to article V.T.C.S. article 5069-2.03. Article 5069-2.03 authorizes an investigation that is distinct from an article 5069-3.08 investigation. Article 5069-2.03 authorizes the OCCC to conduct an investigation of a written complaint containing allegations of violations of certain laws and provides that the OCCC may obtain information about a specific loan transaction under investigation. The statute provides in part as follows:

(1) The investigative and enforcement authority under this Article applies only to Chapters 2, 3, 4, 5, 6, 6A, 7, 8, 9, and 15 of this title and the Texas Pawnshop Act (Article 5069-51.01 et seq., Vernon's Texas Civil Statutes). Upon receipt of written complaint or other reasonable cause to believe that any provision of those statutes are being violated by any person, the Consumer Credit Commissioner may request such person to furnish information in regard to a specific loan or retail transaction or business practice alleged to be in violation of those statutes.

.....

(3) In the course of any investigation, the Consumer Credit Commissioner may require by subpoena or summons, issued by the Consumer Credit Commissioner addressed to any peace officer within the State, the attendance and testimony of witnesses, and the production of books, accounts, papers, correspondence, or records (excepting such as are absolutely necessary for the continued course of business which shall not be removed from the office or place of business) which such books, accounts, papers, correspondence, or records the Consumer Credit Commissioner shall have the right to examine, or cause to be examined, at the office, or place of business, and to require copies of such portions thereof as may be deemed necessary touching the matter in question

V.T.C.S. article 5069-2.03 contains no confidentiality provision for information obtained during an investigation under that provision. The confidentiality for information obtained during an examination conducted pursuant to article 5069-3.08 does not apply to information obtained during an investigation conducted under article 5069-2.03. *See id.* Thus, the requested information is not made confidential by statutory law.

However, the bulk of the information at issue is protected from disclosure under common-law privacy. Section 552.101 of the Government Code applies to information

made confidential by common-law privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert denied*, 430 U.S. 931 (1977). Common-law privacy protects information if (1) it contains highly intimate or embarrassing facts about a person's private affairs the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Id.* at 685.

Financial information relating to an individual, such as sources of income, salary, mortgage payments, assets, medical and utility bills, social security and veterans benefits, retirement and state assistance benefits, and credit history constitute highly intimate or embarrassing facts about a person's private affairs. *See Open Records Decision Nos. 545 (1990); 373 (1983)*. However, when financial information pertains to a debt owed to a governmental body, the information is not excepted from public disclosure by common-law privacy because the public has a legitimate interest in such information. *See Open Records Decision Nos. 600 (1992); 545*.

The requested information is primarily private financial information. This information does not pertain to a transaction with a governmental body, but with a private loan company. Thus, there is no legitimate public interest in this information. Accordingly, we have marked the information the OCCC must withhold under section 552.101 of the Government Code as information protected by a common-law right to privacy.¹

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 contact this office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Government Section

KHG/rho

Ref.: ID# 27465

¹ We have no information that would indicate that the requestor here is representing the claimant whose privacy rights are at issue.

Enclosures: Marked documents
Open Records Decision No. 392

cc: Mr. Andrew J. Lehrman
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