



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 26, 1996

Mr. Everette D. Jobe
General Counsel
Texas Department of Banking
2601 North Lamar Boulevard
Austin, Texas 78705-4294

OR96-2262

Dear Mr. Jobe:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 37927.

The Texas Department of Banking (the "department") received a request for "a copy of the nonconfidential portions of the application for merger of The Bank of El Paso with and into The First National Bank of Fabens, Texas." You do not raise any exceptions under the Open Records Act but ask whether "a copy of an application to federal authorities, submitted to the state by the applicant pursuant to Art. 342-3.501(c)(3) [V.T.C.S.], constitutes information obtained from a federal agency that is confidential under federal law, and that may not therefore be disclosed by the Department except as provided by federal law."

Section 552.301 of the Government Code provides that a governmental body must ask the attorney general for a decision as to whether requested documents must be disclosed not later than the tenth calendar day after the date of receiving the written request. The department received the written request for information on December 13, 1995. You did not request a decision from this office until December 27, 1995, more than ten days after the requestor's written request. Therefore, we conclude that the department failed to meet its ten-day deadline for requesting an opinion from this office.

When a governmental body fails to request a decision within ten days of receiving a request for information, the information at issue is presumed public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See id.*

Normally, a compelling interest is that some other source of law makes the information confidential or that third party interests are at stake. Open Records Decision No. 150 (1977) at 2.

You do not cite any law, nor are we aware of any law, which makes the requested information confidential. Although you state that federal law may make certain information obtained from federal authorities confidential in the hands of the department, that is not the case in this instance. In this instance, the information was submitted to the department by the applicant pursuant to article 342-3.501(c)(3), V.T.C.S. We do not believe that this information constitutes information obtained from a federal agency.

In the absence of a demonstration that the information is confidential by law or that other compelling reasons exist as to why the information should not be made public, you must release the information. *See also* Gov't Code § 552.352 (the distribution of confidential information is a criminal offense). If you have any questions regarding this matter, please contact this office.¹

Yours very truly,

A handwritten signature in black ink that reads "Todd Reese". The signature is written in a cursive style with a long horizontal line extending to the right.

Todd Reese
Assistant Attorney General
Open Records Division

RTR/rho

Ref.: ID# 37927

Enclosures: Submitted documents

cc: Ms. Kathy Harper
Jenkins & Gilchrist, P.C.
1445 Ross Avenue, Suite 3200
Dallas, Texas 75202-2799
(w/o enclosures)

¹You also ask whether it is appropriate for the department to require a requestor to obtain the requested information from another agency. Because the department is a "governmental body" as defined by section 552.003 of the Government Code, it must comply with all requirements of the Open Records Act, including making public information available for public inspection and copying upon receipt of a written request for information or requesting an opinion from this office as to whether any of the exceptions listed in subchapter C of chapter 552 may except the requested information from required public disclosure within ten days of receipt of the request.