



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 4, 1997

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

OR-0719

Dear Mr. Jobe:

You have asked this office to reconsider its decision in Open Records Letter No. 96-2262 (1996). We assigned your request for reconsideration ID# 104706.

The Texas Department of Banking (the "department") received a request for "the nonconfidential portion of the application for merger of the Bank of El Paso with and into The First National Bank of Fabens, Texas." In Open Records Letter No. 96-2262 (1996), we concluded that the department had failed to timely seek a decision from this office as required by section 552.301 of the Government Code. Based upon our determination that the department had failed to seek a decision from this office within ten days of receipt of the written request for information, we advised you that the information requested was presumed to be public and must be disclosed. Gov't Code § 552.302. However, that determination was in error. In fact, the department met its statutory deadline for seeking a decision from this office. We will now consider your arguments against disclosing the requested portions of the application.

The application for merger and various attachments were submitted to this office for review. You assert that the documents at issue are protected from disclosure pursuant to The Freedom of Information Act ("FOIA") 5 U.S.C. § 552 and the Privacy Act of 1974, 5 U.S.C. § 552a. However, you have not explained how these federal statutes are applicable to the information at issue.

You assert that the application and attachments are confidential in their entirety pursuant to article 342-2.101 of the Banking Code, which provides:

Information obtained directly or indirectly by the department relative to the financial condition or business affairs of a financial institution, or a present,

former, or prospective shareholder, participant, officer, director, manager, affiliate, or service provider of a financial institution, other than the public portions of call reports and profit and loss statements, whether obtained through application, examination, or otherwise, except published statements, and all related files and records of the department are confidential and may not be disclosed by the banking commissioner or an employee of the department except as expressly provided by the banking commissioner or an employee of the department except as expressly provided otherwise by this Act or rules adopted under this Act.

In Open Records Letter No. 96-1638 (1996), this office interpreted article 342-2.101 as a broad confidentiality provision. Upon reviewing the documents, we agree that they comprise information obtained by the department that are relative to the business affairs of a financial institution. None of the documents at issue constitute the public portions of call reports or profit and loss statements. Thus, the records are confidential pursuant to article 342-2.101.

If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 104706

Enclosures: Submitted documents

cc: Ms. Kathy Harper
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(w/o enclosures)