



August 2, 1999

Mr. Loren Svor  
Assistant General Counsel  
Texas Department of Banking  
2601 N. Lamar Boulevard  
Austin, Texas 78705-4294

OR99-2171

Dear Mr. Svor:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 126313.

The Texas Department of Banking (the "department") received a request for information relating to the Sterling Trust Company. You state that most of the responsive information has been released. You assert, however, that some of the requested documents or portions of those documents are excepted from disclosure under article 342a-2.101 of Vernon's Texas Civil Statutes, in conjunction with section 552.101 of the Government Code.

The Public Information Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. *See* Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. *See, e.g.*, Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

You received the request for information on April 15, 1999. You did not seek a decision from this office until May 14, 1999. Consequently, you have not met your statutory burden. Gov't Code 552.301. The requested information is, therefore, presumed public. You have, however, demonstrated that portions of the responsive documents are confidential by law or that other compelling reasons exist such that the information should not be made public. Thus, we will examine which documents or portions of documents must be withheld.

Section 552.101 provides an exception from disclosure for information that is confidential by law. Article 342a-2.101 provides for the confidentiality of certain information obtained by the department, as follows:

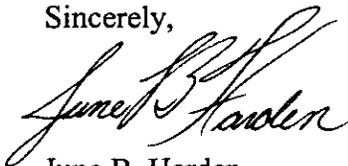
(a) Information obtained directly or indirectly by the department relative to the financial condition or business affairs of a state trust company, other than the public portions of a report of condition or income statement, or a present, former, or prospective shareholder, participant, officer, director, manager, affiliate, or service provider of the state trust company, whether obtained through application, examination, or otherwise, and each related file or record of the department is confidential and may not be disclosed by the banking commissioner or an employee of the department except as expressly provided otherwise by this Act or a rule adopted under section 1.003(a)(1) of this Act.

(b) Information obtained by the department from a federal or state regulatory agency that is confidential under federal or state law may not be disclosed except as provided by federal or state law.

After careful review, we agree that the information at issue is protected under article 342a-2.101 as "information obtained directly or indirectly by the department relative to the financial condition or business affairs of a state trust company." Thus, the information must be withheld under section 552.101.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Sincerely,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/ch

Ref: ID# 126313

Encl. Submitted documents

cc: Ms. Patricia Charlton  
George & Donaldson  
114 West 7<sup>th</sup> Street  
Austin, Texas 78701  
(w/o enclosures)