OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

May 3, 2002

Mr. Steve Martin
Assistant General Counsel
Texas Department of Banking
2601 North Lamar Boulevard
Austin, Texas 78705-4294

OR2002-2335

Dear Mr. Martin:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 162446.

The Texas Department of Banking (the "department") received a request for "a copy of the Commitment Letter and any subsequent related information" concerning United Central Bank. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure information that is made confidential by law, including information made confidential by statute. You raise section 31.301(a) of the Finance Code, which reads as follows:

> (a) Except as expressly provided otherwise by this subtitle, Chapter 11 or 12, or a rule adopted under this subtitle, the following are confidential and may not be disclosed by the banking commissioner or an employee of the department:
>
> > (1) information directly or indirectly obtained by the department in any manner, including an application or examination, concerning 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 information in a published statement or in the public portion of a call report or profit and loss statement; and

(2) all related files and records of the department.

You assert that the submitted information is information obtained by the department that relates to the financial condition of a financial institution, and as such, is confidential under section 31.301. We agree. Accordingly, the department must withhold the information from public disclosure based on section 552.101 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be

sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/seg

Ref: ID# 162446

Enc. Submitted documents

c: Ms. Sally Schimmel
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(w/o enclosures)