



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 21, 2010

Ms. Betsy Loar
Assistant Commission and General Counsel
Credit Union Department
914 East Anderson Lane
Austin, Texas 78752-1699

OR2010-00992

Dear Ms. Loar:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 367657.

The Texas Credit Union Department (the "department") received a request for a copy of a specified purchase and assumption agreement, all exhibits and supporting documentation related to that agreement, and all documents regarding the bidding and assumption process for a specified credit union. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.112 of the Government Code.¹ You also claim that the submitted information may contain third parties' proprietary information subject to exception under the Act. Accordingly, you have notified the third parties of this request for information and of their right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure

¹Although you also initially raised section 552.111 of the Government Code, you have not submitted any arguments regarding the applicability of this exception nor have you identified any information you seek to withhold under this exception. Therefore, we assume you no longer assert this exception to disclosure. *See* Gov't Code §§ 552.301(b), (e), .302.

under certain circumstances). We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This office has repeatedly held that the transfer of confidential information between governmental agencies does not destroy the confidentiality of that information. Attorney General Opinions H-917 (1976), H-836 (1974), Open Records Decision Nos. 561 (1990), 414 (1984), 388 (1983), 272 (1981), 183 (1978). These opinions recognize the need to maintain an unrestricted flow of information between state agencies. In Open Records Decision No. 561, we considered whether the same rule applied regarding information deemed confidential by a federal agency. In that decision, we noted the general rule that chapter 552 of the United States Code, the federal Freedom of Information Act ("FOIA"), applies only to federal agencies and does not apply to records held by state agencies. ORD 561 at 6. Further, we stated that information is not confidential when in the hands of a Texas agency simply because the same information is confidential in the hands of a federal agency. *Id.* However, in the interests of comity between state and federal authorities and to ensure the flow of information from federal agencies to Texas governmental bodies, we concluded that: "when information in the possession of a federal agency is 'deemed confidential' by federal law, such confidentiality is not destroyed by the sharing of the information with a governmental body in Texas. In such an instance, [section 552.101] requires a local government to respect the confidentiality imposed on the information by federal law." *Id.* at 7.

In this instance, the submitted information was provided to the department by the National Credit Union Administration (the "administration"). The department asserts that the administration considers this information confidential. Further, the administration, in its brief to our office, states that the submitted information is confidential pursuant to section 792.31 of title 12 of the Code of Federal Regulations. *See* 12 C.F.R. § 792.31 (providing that copies of reports of examination and other documents, papers, or information provided by the administration to governmental agencies and insured financial institutions remain the property of the administration, and no person, agency, or employee shall disclose the reports or exempt records without the administration's express written authorization). The administration additionally asserts the trade secrets and personal financial information privilege found in section 552(b)(4) of the United States Code, the deliberative process privilege found in sections 552(b)(5) and 552(b)(8) of the United States Code, and the personal privacy provisions found in section 552(b)(6) of the United States Code for portions of the submitted information. *See* 5 U.S.C. § 552(b)(4), (5), (6), (8). Therefore, we conclude

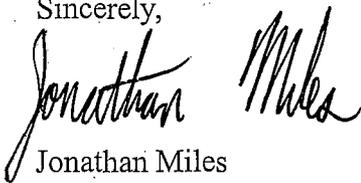
²We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

that the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with federal law. As our ruling is dispositive, we need not address your remaining argument against disclosure.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 367657

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Sheila A. Albin
Associate General Counsel
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314-3428
(w/o enclosures)