



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 23, 2019

Ms. Christina M. Nahidi
Deputy General Counsel
Texas Department of Banking
2601 North Lamar Boulevard
Austin, Texas 78705

OR2019-26582

Dear Ms. Nahidi:

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# 787125 (PIR# 19-208).

The Texas Department of Banking (the "department") received a request for all e-mail communications and telephone messages between the department and employees of a named bank during a specified time period.¹ You state you have released some information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.112 of the Government Code. Additionally, you indicate release of the submitted information may implicate the proprietary interests of Legend Bank, N.A. ("Legend"). Accordingly, you provide documentation demonstrating you notified Legend of the request for information and of its right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 at 3 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on third party to raise and explain applicability of exception in

¹ The department sought clarification of the information requested and received a response. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.2d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

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

Initially, we note some of the submitted information, which we marked, is not responsive to the instant request because it is outside the requested time period. This ruling does not address the public availability of any information that is not responsive to the request and the department is not required to release such information in response to this request.

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses information protected by other statutes, including section 31.301 of the Finance Code. Section 31.301(a) provides the following:

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, officer, director, 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.

Fin. Code § 31.301(a). You state Exhibits E, F, and H consist of documents obtained or created by the department that concern the financial condition or business affairs of the named bank and former or prospective shareholders, officers, directors, or affiliates of the bank. We understand the named bank qualifies as a financial institution as defined by the Finance Code. *See id.* § 31.002(a)(25). Additionally, you explain no provision in subtitle A of title 3 of the Finance Code, chapter 11 or 12 of the Finance Code, or rule adopted under subtitle A of the Finance Code would provide for the release of the information at issue. *See id.* § 31.301. Finally, you state the information at issue was not obtained from a published statement or the public portion of the call report or profit and loss statement. *See id.* § 31.301(a)(1). Based on your representations and our review, we find the submitted responsive information is confidential under section 31.301 of the Finance Code, and the


² We assume 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 (1987)*. 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.

department must withhold the submitted responsive information under section 552.101 of the Government Code.³

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Kimbell Kesling
Attorney
Open Records Division

KK/eb

Ref: ID# 787125

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third-Parties
(w/o enclosures)

³ As our ruling is dispositive, we need not address your remaining arguments against the disclosure of this information.