



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 25, 2020

Mr. Ryan P. McCarthy
Assistant General Counsel
Texas Department of Banking
2601 North Lamar Boulevard
Austin, Texas 78705

OR2020-21417

Dear Mr. McCarthy:

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# 840541 (PIR# 20-176).

The Texas Department of Banking (the "department") received a request for information pertaining to a specified company from a specified time period.¹ You state the department released some of the requested information. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of Rocket Dollar. Accordingly, you state, and provide documentation showing, you notified Rocket Dollar of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the exception you claim and reviewed the submitted information, a portion of which constitutes a representative sample.² We have also received and considered comments from the

¹ We note the department sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

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 (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.

requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Rocket Dollar explaining why its information should not be released. Therefore, we have no basis to conclude Rocket Dollar has a protected proprietary interest in the submitted information. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Accordingly, the department may not withhold any of the information at issue on the basis of any proprietary interest Rocket Dollar may have in it.

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses information protected by other statutes, such as 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 Exhibit B consists of documents obtained or created by the department that concern the financial condition or business affairs of a bank. You also state the 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. *See id.* § 31.301. Finally, you state the information at issue was not obtained from a published statement or the public portion of a call report or profit and loss statement. *See id.* § 31.301(a)(1). Based on your representations and our review, we agree the information at issue is confidential under section 31.301 of the Finance Code, and the department must withhold Exhibit B under section 552.101 of the Government Code.

Section 552.137 of the Government Code exempts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with

a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c).³ See Gov’t Code § 552.137(a)-(c). The e-mail address at issue is not excluded by subsection (c). Therefore, the department must withhold the personal e-mail address in the remaining information under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

In summary, the department must withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 31.301 of the Finance Code. The department must withhold the personal e-mail address in the remaining information under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. The department must release the remaining information.

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,

Matthew Taylor
Assistant Attorney General
Open Records Division

MT/be

Ref: ID# 840541

c: Requestor

1 Third Party

³ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).