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May 4, 1990

Cecil R. Monroe, Deputy Administrator
Finance Section
Division of Finance and Corporate Securities
Department of Insurance and Finance
Labor and Industries Building
Salem, OR 97310

John M. Villaume
3006 N.E. 16th Avenue
Portland, Oregon 97212

Re: **Petition for Public Records Disclosure Order; Division of Finance and Corporate Securities, Financial Institutions Division Records**

Dear Mr. Monroe and Mr. Villaume:

This letter is the Attorney General's order on Mr. Villaume's petition for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. The petition, which we received on April 20, 1990,[1] asks the Attorney General to order the Division of Finance and Corporate Securities (division) to produce copies of certain reports of examination, and related materials, prepared by the Federal Home Loan Bank Board (FHLBB); reports of all FHLBB field visits; reports of examination, and related materials, prepared by the state; monthly trial balances; and ledgers, all for four savings and loan associations, namely: Citizens Savings and Loan Association (Citizens); State Savings and Loan Association (State); Willamette Savings and Loan Association (Willamette); and American Savings and Loan Association (American). For the reasons that follow, we grant the petition in part and deny it in part.

The Public Records Law confers the right to inspect public records of a public body in Oregon, subject to certain exceptions.

ORS 192.420. ORS 192.505; Turner v. Reed, 22 Or App 177, 186 n 8, 538 P2d 373 (1975). Here, much of the requested material is exempt under ORS 192.502(7), which incorporates federal prohibitions against disclosure, and under ORS 192.502(8), which incorporates the exemption in ORS 722.419 for records relating to savings and loan associations.

1. Examination Reports of the FHLBB and Information Relating to Field Visits

Mr. Villaume has asked to inspect certain FHLBB examination reports, specifically the report dated July 9, 1982, and a supplement thereto, with related materials, and the report dated January 28, 1985, each identified as docket #7470. He also seeks reports of all FHLBB field visits to each of the savings associations listed above. Those reports and documents were prepared or provided by the FHLBB, a federal agency or instrumentality.[2]

Federal regulations exempt these records from disclosure.[3] Specifically, 12 CFR § 505.5(a) and (b) provide in relevant part:

> "(a) General rule. Except as otherwise provided in this part * * * information of the [Federal Home Loan Bank] Board that has not been published in accordance with § 505.3 of this part and is not available to the public through other sources will not be made available to the public or otherwise disclosed if such information is:
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> "* * * * *
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> "(2) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of, the Board or a Federal Home Loan Bank, relating to the affairs of any member, institution or affiliate thereof, or any other person engaged in, or proposing to engage in, the savings and loan business;
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> "* * * * *
>
> "(7) Contained in interagency and intra-agency memoranda or letters that would not be routinely available by law to a private party in litigation with the Board * * *.

> "(b) Information available to insured institutions and to State and Federal agencies. * * * Reports of examination and other information relating to State-chartered insured institutions and affiliates are made available, upon request, by the Director of the Board's Office of Examinations and Supervision to the State governmental authority having general supervision of such State-chartered insured institutions. * * * All reports or other information made available pursuant to this paragraph shall remain the property of the Board and, except as otherwise provided in this part, no person, agency, or authority to whom the information is made available, or any officer, director, or employee thereof, shall disclose any such information * * *."

We understand that neither the FHLBB, nor its successor entity, has published or approved release of the examination records or field visit reports described above.

Federal courts long have recognized the confidential nature of records described in 12 CFR § 505.5. See, e.g., Federal Home Loan v. Superior Court, 494 F Supp 924, 927 (D Az 1980); First Fed. S.&L. Ass'n. v. Fed. Home Loan Bd., 426 F Supp 454, 458 (W.D. Ar 1977), aff'd, 570 F2d 693 (8th Cir 1978). For instance in Federal Home Loan v. Superior Court, supra, a state judge ordered a savings association to disclose the results of an examination report to a plaintiff home building company. Citing 12 CFR § 505.5, the federal district court enjoined the savings and loan from disclosing its examination report. The court also enjoined the builder from enforcing discovery sanctions against the savings and loan for failure to make disclosure, and enjoined the Arizona state judge from any further action designed to force disclosure of such documents. 494 F Supp at 927.

We conclude that federal law prohibits disclosure of the requested records without permission from the federal regulatory officials. This prohibition is incorporated into the Public Records Law by ORS 192.502(7), which exempts from disclosure "[a]ny public records or information the disclosure of which is prohibited by federal law or regulations."

2. Examination Reports of Division of Finance and Corporate Securities, Financial Institutions Section

Mr. Villaume also seeks to inspect the examination reports prepared by the division relating to the four listed savings associations. Inspection of such documents is governed by ORS 722.419, which provides in relevant part:

> "(2) Except as provided in subsections (6) and (7) of this section, the following records of the department pertaining to the administration of this chapter are exempt from disclosure or production:
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> "(a) Examination reports and work papers, directives, orders and correspondence that relate to examination reports.
>
> "* * * * *
>
> "(6) Notwithstanding subsection (2) of this section, the director may disclose any record of the section specified in this subsection pertaining to an association that has been liquidated if the director determines in the particular instance that the public interest in disclosure of the record outweighs the interests of the association or its directors, stockholders, officers, employees or customers in keeping the record confidential. * * *."

Mr. Villaume asks to inspect records relating to four specific savings associations. The Deputy Administrator for the division, Cecil Monroe, has informed us that none of the four institutions has been liquidated. Willamette is operating currently. Citizens, Savings and American were converted from state-chartered to federally-chartered savings associations and then acquired by other entities.

We believe that Mr. Monroe's interpretation of "liquidated" is in accord with the common meaning of that term as applied to corporations: i.e., the winding up of the affairs of a corporation by collecting its assets, settling with creditors and debtors and apportioning the amount of its profit and loss. See Cobb v. Galloway, 167 Or 604, 623, 119 P2d 896 (1941); Rothschild Intern. Corp. v. Liggett Group, Inc., 474 A2d 133, 136 (Del Supr 1984). Because none of the institutions has been liquidated, the examination reports and related records prepared by or for the division are exempt from disclosure under ORS 722.419(2). ORS 192.502(8) incorporates that exemption into the Public Records Law.

3. Monthly Trial Balances for Savings Associations

Mr. Monroe asserts no exemption from disclosure for monthly trial balances prepared by or for the savings associations. Those documents must be disclosed.

4. Ledgers for Savings Associations

Mr. Monroe informs us that the division has no savings association ledgers in its custody. It follows, therefore, that we cannot order Mr. Monroe to permit Mr. Villaume to inspect such documents.

5. Conclusion

For these reasons, all of the requested records in the division's custody, except for the monthly trial balances, are exempt. Those balances must be disclosed.

Under ORS 192.450(2), the division has seven days from the date of this order in which to comply. The division may charge Mr. Villaume for its actual cost in satisfying this request, including time spent by the agency in locating the records and any photocopy costs. ORS 192.440(3); Oregon Attorney General's Public Records and Meetings Manual 6 (1989).

Sincerely,

PAMELA L. ABERNETHY
Special Counsel to the
Attorney General

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[1]We appreciate Mr. Villaume's courtesy in allowing us to exceed the statutory deadline for responding to the petition.

[2]The FHLBB has been abolished and its duties subsumed by other federal agencies. Pub. L. 101-73, Title IV, § 401(a)(2) August 9, 1989, 103 Stat. 354 - 363,. The orders, resolutions, determinations and regulations of the FHLBB continue in effect until superseded or modified. Id. at § 401(h).

[3]We recently discussed the controlling provisions. See Public Records Order, March 13, 1990 (MacKenzie).