



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

January 16, 2003

Mr. Michael D. Chisum
General Counsel
Texas Savings and Loan Department
2601 North Lamar, Suite 201
Austin, Texas 78705

OR2003-0347

Dear Mr. Chisum:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 175067.

The Texas Savings and Loan Department (the "department") received a request for information contained in its consumer complaint files involving mortgage brokers for a specified two-year period.¹ The department claims that some of the requested information is excepted from disclosure under sections 552.101 and 552.110 of the Government Code. The department also notified private parties to whom the requested information pertains of the request and of their right of submit arguments to this office as to why the information should not be released.² We received arguments from some of the interested parties. We have considered all of the submitted arguments and have reviewed the information you submitted.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that another statute makes confidential. The department raises section 552.101 in conjunction with section 156.301 of the Finance Code. The

¹We note that before requesting this decision, the department sought and obtained a clarification of the request for information. *See* Gov't Code § 552.222(b) (governmental body may ask requestor to clarify request if what information is requested is unclear to governmental body); Open Records Decision No. 663 at 2-5 (1999) (addressing circumstances under which communications with requestor to clarify or narrow request toll governmental body's deadline to request attorney general decision under Gov't Code § 552.301(b)).

²*See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Gov't Code ch. 552 in certain circumstances).

Mortgage Broker License Act is codified as chapter 156 of the Finance Code. Section 156.301(b) of the act provides that

[o]n the signed written complaint of a person, the [savings and loan] commissioner shall investigate the actions and records of a person licensed under this chapter if the complaint, or the complaint and documentary or other evidence presented in connection with the complaint, provides reasonable cause.

Fin. Code § 156.301(b). Section 156.301(f) provides that “[i]nformation obtained by the commissioner during an inspection or investigation is confidential unless disclosure of the information is permitted or required by other law.” *Id.* § 156.301(f). You indicate that the department obtained the submitted information during investigations of complaints under section 156.301. You do not inform this office, and we are not otherwise aware, of any other law that permits or requires disclosure of the submitted information. Accordingly, we conclude that the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 156.301(f) of the Finance Code as information made confidential by law. As we are able to make this determination, we need not address the other submitted arguments against disclosure.

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

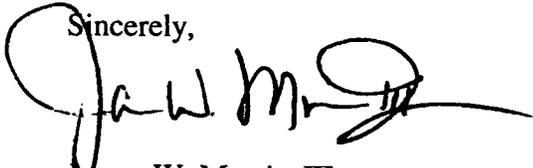
should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 175067

Enc: Submitted documents

c: Ms. Kathy Mitchell
Research Manager
Consumers Union, Southwest Regional Office
1300 Guadalupe Street, Suite 100
Austin, Texas 78701
(w/o enclosures)

Mr. Kulathumkal A. Abraham
2017 MeadowBrook Drive
Mesquite, Texas 75149
(w/o enclosures)

Mr. John E. Johnson
1600 Texas Street, Apt. 520
Fort Worth, Texas 76102
(w/o enclosures)

Mr. Ken A. Gatlin
4320 Orchard Gate Lane
Plano, Texas 75024
(w/o enclosures)