



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 15, 2004

Ms. Mary Winston
Public Information Officer
Texas Savings & Loan Department
2601 North Lamar, Suite 201
Austin, Texas 78705

OR2004-3080

Dear Ms. Winston:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 199356.

The Texas Savings and Loan Department (the "department") received a request for a complaint filed against a loan officer licensed by the department. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information made confidential under section 156.301 of the Finance Code. Section 156.301 provides in relevant part:

(b) On the signed written complaint of a person, the 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. The commissioner, before commencing an investigation, shall notify a mortgage broker or loan officer in writing of the complaint and that the commissioner intends to investigate the matter.

...

(f) Information obtained by the commissioner during an inspection or an investigation is confidential unless disclosure of the information is permitted or required by other law.

You state the requested complaint is information obtained by the commissioner during an inspection and investigation under section 156.301 of the Finance Code, and therefore it is confidential under section 156.301(f). Upon receiving a signed written complaint from a person, the commissioner must determine whether the complaint provides reasonable cause for an inspection or investigation and, if so, must notify the mortgage broker or loan officer of the commissioner's intent to investigate the matter. Gov't Code § 156.301(b). An inspection or investigation under section 156.301 does not begin until after a person makes a complaint; thus, we believe the submitted complaint was not information obtained by the commissioner during an inspection or investigation, and therefore, it is not confidential under section 156.301(f).

Section 552.101 of the Government Code also excepts information made confidential under common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. This office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is confidential under common law privacy. See Open Records Decision Nos. 600 (1992), 545 (1990). We have marked the information within the complaint that is confidential under common law privacy, and must be withheld pursuant to section 552.101.

The submitted information also contain an e-mail address obtained from the public. Under section 552.137 of the Government Code, a governmental body must withhold the e-mail address of a member of the general public, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. See Gov't Code § 552.137 (a), (b). You do not inform us that the complainant has affirmatively consented to the release of her e-mail address contained in the submitted complaint; therefore, you must withhold her e-mail address, which we have marked, under section 552.137.

To conclude, the submitted complaint is not confidential under section 156.301 of the Finance Code. The marked information is confidential under common law privacy and the personal e-mail address found within the complaint is excepted under section 552.137 of the Government Code. The remaining information in the complaint must be released to the requestor.

You also ask this office to issue a previous determination authorizing the department to withhold information acquired during an investigation under section 156.301 if requested in the future. We decline to issue such a previous determination at this time. Therefore, this letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us. 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).

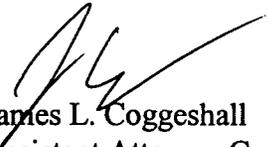
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/seg

Ref: ID# 199356

Enc. Submitted documents

c: Ms. Sharon Reed Wigley
12310 Long Oak Court
Houston, Texas 77070
(w/o enclosures)