



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 12, 2004

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

OR2004-8647

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# 210737.

The Texas Savings and Loan Department (the "department") received a request for (1) a list of education providers that have offered certain coursework during the last six months; (2) a schedule of licensees that will be inspected within a certain time period, including the scheduled inspection dates; (3) a list of current and active complaints against mortgage brokers and loan officers, including the names and addresses of those mortgage brokers and loan officers; (4) a list of licensees who have had disciplinary action taken against them but whose orders have not been published on the department's website; and (5) a list of third party independent auditors that have been engaged as a result of an investigation or inspection. You state that information responsive to items (1) and (4) will be released to the requestor. You also state that information responsive to items (2) and (5) does not exist. We note that the Public Information Act (the "Act") does not require a governmental body to disclose information that did not exist at the time the request was received.<sup>1</sup> You claim that the submitted information is excepted from disclosure under section 552.101 of the

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<sup>1</sup> *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision No. 452 at 3 (1986).

Government Code.<sup>2</sup> We have considered the exception you claim and reviewed the submitted information.<sup>3</sup>

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision” and encompasses information made confidential by statute. You assert that the submitted information is confidential under section 156.301 of the Finance Code, which 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.

Fin. Code § 156.301(b), (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. *Id.* §156.301(b). Thus, an inspection or investigation under section 156.301 does not begin until after a person makes a complaint. Therefore, the initial complaint to the department does not constitute “[i]nformation obtained

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<sup>2</sup> We note that you raise section 552.305 of the Government Code as an exception to disclosure. Section 552.305 states in relevant part that “[i]n a case in which information is requested under this chapter and a person’s privacy or property interests may be involved . . . a governmental body may decline to release the information *for the purpose of requesting an attorney general decision.*” Gov’t Code § 552.305 (emphasis added). Thus, section 552.305 is not an exception to disclosure under the Act. Rather, section 552.305 is a procedural provision permitting a governmental body to withhold information that may be private while the governmental body is seeking an attorney general’s decision under the Act. Because you believe the present request implicates the privacy interests of third parties, we consider your privacy arguments pursuant to section 552.101 of the Government Code.

<sup>3</sup> We assume that 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 ruling 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.

by the commissioner during an inspection or investigation,” and is thus not made confidential by section 156.301(f).

In this instance, you assert that the information at issue was obtained in the course of conducting investigations and is therefore confidential under section 156.301(f). We note that the information at issue consists of a list of names, license numbers, business addresses, and business telephone numbers of mortgage brokers and loan officers. Texas law requires mortgage brokers and loan officers to be licensed by the department. See Fin. Code § 156.201 (requiring mortgage brokers and loan officers to be licensed); 7 T.A.C. § 80.3 (stating that license applications are to be submitted on forms promulgated by Savings and Loan Commissioner). The “Application for Mortgage Broker License/Loan Officer License” promulgated by the department requires a prospective licensee to provide his or her name, business address, and business telephone number, as well as other information. See Application for Mortgage Broker License/Loan Officer License, available at <<http://www.tsld.state.tx.us/MBApplicationAll.htm>> (revised Aug. 8, 2004). License numbers are assigned to mortgage brokers and loan officers by the department. Because the department maintained the submitted information in the licensing files of the mortgage brokers and loan officers at issue prior to the instigation of any complaint, we find that this information does not constitute “[i]nformation obtained by the commissioner during an inspection or an investigation.” Therefore, this information is not made confidential by section 156.301 of the Finance Code and may not be withheld on that basis.

We also understand you to assert that the submitted information is protected under the doctrine of common-law privacy.<sup>4</sup> Common-law privacy protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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. *Id.* at 683. Upon review, we find that the submitted information either is not highly intimate or embarrassing for the purpose of common-law privacy or is of legitimate interest to the public. Therefore, none of the submitted information may be withheld under section 552.101 in conjunction with the doctrine of common-law privacy. As the department claims no other exceptions to disclosure, the submitted information must be released to the requestor.

You ask that this ruling “be deemed a ‘previous determination’ and made applicable to future requests for information concerning the scheduling of department examination and lists of current and active investigations.” We decline to issue such a previous determination at this

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<sup>4</sup>Section 552.101 also encompasses the doctrine of common-law privacy.

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; 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 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,

A handwritten signature in black ink, appearing to read "Amy Peterson", with a long, sweeping flourish extending to the right.

Amy D. Peterson  
Assistant Attorney General  
Open Records Division

ADP/sdk

Ref: ID# 210737

Enc. Submitted documents

c: Mr. Jerry Rutledge, DREI, CREI  
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(w/o enclosures)