



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 11, 2005

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

OR2005-02104

Dear Ms. Winston:

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# 220152.

The Texas Savings and Loan Department (the "department") received a request for information related to a particular licensed mortgage broker. You state that some of the requested information is being released but claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.130, and 552.137 of the Government Code. We have considered the exceptions 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 other statutes, such as 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.

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 by the commissioner during an inspection or investigation," and is thus not made confidential by section 156.301(f). However, you state that the department obtained the remaining information at issue 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 remaining information at issue, which we have marked, 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.

We turn now to the submitted information that was not obtained pursuant to the department's investigation. Section 552.101 of the Government Code also encompasses sections 560.001, 560.002, and 560.003 provide as follows:

Sec. 560.001. DEFINITIONS. In this chapter:

- (1) "Biometric identifier" means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry.
- (2) "Governmental body" has the meaning assigned by Section 552.003 [of the Government Code], except that the term includes each entity within or created by the judicial branch of state government.

Sec. 560.002. DISCLOSURE OF BIOMETRIC IDENTIFIER. A governmental body that possesses a biometric identifier of an individual:

- (1) may not sell, lease, or otherwise disclose the biometric identifier to another person unless:
 - (A) the individual consents to the disclosure;

(B) the disclosure is required or permitted by a federal statute or by a state statute other than Chapter 552 [of the Government Code]; or

(C) the disclosure is made by or to a law enforcement agency for a law enforcement purpose; and

(2) shall store, transmit, and protect from disclosure the biometric identifier using reasonable care and in a manner that is the same as or more protective than the manner in which the governmental body stores, transmits, and protects its other confidential information.

Sec. 560.003. APPLICATION OF CHAPTER 552. A biometric identifier in the possession of a governmental body is exempt from disclosure under Chapter 552.

Gov't Code §§ 560.001-.003. Upon review, we find section 560.002 does not permit the disclosure of the submitted fingerprint information in this instance. Therefore, the department must withhold the fingerprints under section 552.101 in conjunction with section 560.003 of the Government Code.

You also note that the submitted documents also contain the licensee's social security number. Section 58.001 of the Occupations Code provides that "[t]he social security number of an applicant for or holder of a license, certificate of registration, or other legal authorization issued by a licensing agency to practice in a specific occupation or profession that is provided to the licensing agency is confidential and not subject to disclosure under Chapter 552, Government Code." Occ. Code § 58.001. Thus, the department must withhold the licensee's social security number pursuant to section 552.101 of the Government Code in conjunction with section 58.001 of the Occupations Code.

We note that the submitted documents include other social security numbers. A social security number may be excepted from disclosure in some circumstances under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that the social security numbers are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you

should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

The submitted documents also contain Texas-issued motor vehicle registration information that is excepted from disclosure under section 552.130 of the Government Code, which provides in pertinent part:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130. We have marked the Texas-issued motor vehicle registration information that must be withheld under section 552.130.

We note that the submitted information includes a account numbers that are excepted from public disclosure under section 552.136 of the Government Code, which provides in relevant part:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. We have marked account number information in the submitted documents that the department must withhold pursuant to section 552.136.

Finally, you claim that the submitted e-mail address are excepted from disclosure pursuant to section 552.137 of the Government Code. This section excepts 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 specifically excluded by section 552.137(c). See Gov’t Code § 552.137(a)-(c). The e-mail address at issue is not specifically excluded by section 552.137(c). You indicate that the relevant individual has not consented to its disclosure. We therefore determine that the department must withhold the e-mail addresses pursuant to section 552.137(a).

In summary, the department must withhold the marked investigative documents pursuant to section 552.101 of the Government Code in conjunction with section 156.301 of the Finance Code. The submitted fingerprints are confidential pursuant to section 560.003 of the Government Code and must be withheld under section 552.101. The licensee’s social security number in the submitted documents must be withheld under section 552.101 in conjunction with section 58.001 of the Occupations Code. The remaining social security numbers may be confidential under federal law. The Texas-issued motor vehicle registration information must be withheld under section 552.130 of the Government Code. We have marked the bank account number that must be withheld under section 552.136 of the Government Code. Finally, the submitted e-mail address must be withheld under section 552.137 of the Government Code. The remaining information must be released to the requestor.

You ask this office to issue a previous determination allowing the department to withhold information obtained during an inspection or investigation made by the department without the necessity of requesting an attorney general decision. See Open Records Decision No. 673 (2001). We decline to issue a previous determination to the department at this time. Accordingly, this letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us and 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, upon receiving this ruling, the governmental body

will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,



L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/seg

Ref: ID# 220152

Enc. Submitted documents

c: Mr. Richard Griffin
Jackson Walker, L.L.P.
1401 McKinney Street, Suite 1900
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(w/o enclosures)