



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 23, 2007

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

OR2007-02159

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# 271949.

The Texas Department of Savings and Mortgage Lending (the "department") received a request for four categories of information related to administrative penalties, the chief examiner, and the department's file pertaining to "licensee #33304 and/or [the requestor], including previous complaints resolution." You state that some of the requested information is being released. You also state that you do not have any documents responsive to parts of the request.¹ You claim that the submitted 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with section 156.301 of the Finance Code. Chapter 156 of

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

the Finance Code is also known as the Mortgage Broker License Act. *See* Fin. Code § 156.001. Section 156.301 provides in part:

(a) The [savings and loan] commissioner may conduct inspections of a person licensed under this chapter as the commissioner determines necessary to determine whether the person is complying with this chapter and applicable rules. The inspections may include inspection of the books, records, documents, operations, and facilities of the person and access to any documents required under rules adopted under this chapter. The commissioner may share evidence of criminal activity gathered during an inspection or investigation with any state or federal law enforcement agency.

(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.

(c) For reasonable cause, the commissioner at any time may investigate a person licensed under this chapter to determine whether the person is complying with this chapter and applicable rules.

...

(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.

Id. § 156.301(a)-(c), (f). We understand you to contend that the submitted information is confidential in its entirety under section 156.301(f). You do not inform us of any law that would permit or require the department to release any of this information. Therefore, based on your arguments and our review of the information at issue, we find that most of the submitted information is confidential under section 156.301(f) of the Finance Code.

We note, however, that the submitted information includes a complaint and documents that appear to have been submitted to the department as attachments to the complaint. Because an investigation of a complaint under section 156.301 would not begin until after the receipt of a complaint, we do not believe that complaints or attachments to complaints constitute “information obtained by the commissioner during an inspection or an investigation[.]” *Id.* § 156.301(b); *see also id.* § 156.301(f) (investigation may be based on complaint and documentary or other evidence presented in connection with complaint). Consequently, we

conclude that a complaint received by the department may not be withheld from the requestor under section 552.101 of the Government Code in conjunction with section 156.301 of the Finance Code. We have marked that type of information. Likewise, to the extent that the submitted documents were provided to the department as attachments to a complaint, we also conclude that any such attachments to a complaint may not be withheld under section 552.101 in conjunction with section 156.301. With the exception of a complaint and attachments to a complaint, we agree 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. We note, however, that certain information not confidential under section 156.301 of the Finance Code must be withheld from the requestor on other grounds.

Section 552.101 also encompasses the doctrine of common-law privacy. The common-law right to privacy protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has determined that financial information that relates only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See Open Records Decision Nos. 600 at 9-12 (identifying public and private portions of certain state personnel records), 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), 523 at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373 at 4 (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis).* We have marked the information that the department must withhold under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.136 of the Government Code is applicable to certain account numbers and other access devices.² This section provides as follows:

- (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

²Unlike other exceptions to disclosure, this office will raise section 552.136 on behalf of a governmental body, as it is a mandatory exception and may not be waived. *See Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001).*

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 note that one of the bank account numbers in the submitted information belongs to the requestor. The requestor has a right of access to this number and it must be released to him. *See* Gov't Code § 552.023 (person or person's authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests). We have marked the types of information that are confidential under this exception. To the extent that these types of information appear in documents that are not confidential under section 156.301 of the Finance Code, they must be withheld under section 552.136 of the Government Code.

Section 552.137 of the Government Code is applicable to certain e-mail addresses.³ 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). We have marked the types of e-mail addresses that are confidential under section 552.137. To the extent that such e-mail addresses appear in documents that are not confidential under section 156.301 of the Finance Code, they must be withheld under section 552.137 of the Government Code, unless the individual to whom a particular e-mail address belongs has affirmatively consented to its public disclosure.

In summary: (1) with the exception of complaints received by the department and attachments to complaints, the department must withhold the submitted documents under section 552.101 of the Government Code in conjunction with section 156.301(f) of the Finance Code. To the extent that the submitted documents are not protected from disclosure under section 552.101 on that basis: (2) the information we have marked must be withheld under section 552.101 in conjunction with common-law privacy; (3) account number

³This office also will raise section 552.137 on behalf of a governmental body, as it is a mandatory exception and may not be waived. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001).

information must be withheld under section 552.136 of the Government Code; and (4) personal e-mail addresses must be withheld under section 552.137 of the Government Code, unless the owner of a particular e-mail address has affirmatively consented to its public disclosure. The rest of the submitted information must be released.

You also ask this office to issue a previous determination that would permit the department to withhold information under section 552.101 of the Government Code in conjunction with section 156.301 of the Finance Code without the necessity of again requesting an attorney general decision with respect to the public availability of such information. We decline to issue such a decision at this time. See Gov't Code §§ 552.301(a), .302; Open Records Decision No. 673 (2001) (previous determinations). 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, 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); *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 Office of the Attorney General 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. 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/krl

Ref: ID# 271949

Enc. Submitted documents

c: Mr. John Ross
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(w/o enclosures)