



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 31, 2008

Mr. F.C. "Chris" Schneider
Public Information Officer
Texas Savings & Loan Department
2601 North Lamar, Suite 201
Austin, Texas 78705

OR2008-01464

Dear Mr. Schneider:

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# 300958.

The Texas Department of Savings & Mortgage Lending (the "department") received two requests from the same requestor for information pertaining to each active loan officer and mortgage broker in the state of Texas. You claim that the requested information is excepted from disclosure under sections 552.101, 552.110, 552.137, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information made confidential by other statutes. You assert that portions of the submitted information are confidential pursuant to section 156.206 of the Finance Code, which provides in relevant part:

¹We 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 open records letter 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.

(a) On receipt of an application for a mortgage broker license or a loan officer license, the commissioner [of the department] shall conduct a criminal background check of the applicant.

(b) The commissioner [of the department] shall obtain criminal history record information on an applicant that is maintained by the Department of Public Safety and shall obtain criminal history record information from the Federal Bureau of Investigation on each applicant. Each applicant must submit with the application fingerprint and other information necessary to implement this section. The commissioner may submit the fingerprint and other information to the Federal Bureau of Investigation, and the Department of Public Safety is designated to be the recipient of the criminal history record information. The commissioner may also obtain criminal history record information from any court or any local, state, or national governmental agency.

(c) The commissioner [of the department] shall keep confidential any criminal background information obtained under this subsection and may not release or disclose the information unless:

(1) the information is a public record at the time the commissioner obtains the information; or

(2) the commissioner releases the information:

(A) under order from a court;

(B) with the permission of the applicant;

(C) to a person through whom the applicant is conducting or will conduct business; or

(D) to a governmental agency.

Fin. Code § 156.206(a)-(c). You indicate that some of the submitted information consists of criminal history information of loan officers and mortgage brokers that was obtained from the Department of Public Safety and the Federal Bureau of Investigation during the loan officer and mortgage broker licensing application process. We note that the release provisions in subsection 156.206(c) are not applicable in this instance. *See id.* § 156.206(c)(1),(2). Therefore, based on your representations and our review, we conclude that the information we have marked is confidential pursuant to section 156.206(c) of the Finance Code and must be withheld under section 552.101 of the Government Code. However, we find that remaining information you seek to withhold under section 156.206 consists of self-reported criminal history information completed by an individual on her licensing application. This

information does not constitute criminal background information for purposes of section 156.206 of the Finance Code, and, accordingly, may not be withheld on that basis.

Section 552.101 also encompasses the doctrine of common law privacy, which 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 types 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. Furthermore, this office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally protected by common law privacy. Open Records Decision Nos. 600 (1992) (personal financial choices concerning insurance are generally confidential), 545 (1990) (common law privacy protects personal financial information not relating to the financial transaction between an individual and a governmental body), 523 (1989) (common law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (common law privacy protects assets and income source information). However, this office has found that the names, addresses, and telephone numbers of members of the public are not excepted from required public disclosure under common law privacy. *See* Open Records Decision No. 455 (1987) (absent special circumstances, the home addresses and telephone numbers of private citizens are generally not protected under the Act's privacy exceptions). The department must withhold the information that we have marked under section 552.101 in conjunction with common law privacy. However, you have failed to demonstrate how the remaining information at issue constitutes highly intimate or embarrassing information the release of which would be highly objectionable to a reasonable person. Therefore, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with common law privacy.

The department claims that some of the remaining information is excepted from disclosure under section 552.110 of the Government Code. By its terms, section 552.110 only protects the interests of the person from whom the information was obtained. This provision does not protect the interests of the governmental body that receives proprietary information, nor does it allow a governmental body to assert section 552.110 for information it creates. A governmental body, however, may assert section 552.110 on behalf of an interested third party. We understand the department to raise section 552.110 on behalf of the loan officer and mortgage broker applicants. Therefore, we will address the department's arguments on behalf of these individuals under section 552.110.

The department raises the commercial or financial information aspect of section 552.110 of the Government Code. Section 552.110(b) of the Government Code protects "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that

disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov’t Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*

You contend that the release of some of the submitted information would cause substantial competitive harm to the individuals to which the information pertains. After reviewing your arguments and the information at issue, however, we find that you have made only conclusory allegations that release of this information would result in substantial competitive harm and have not provided a specific factual or evidentiary showing to support this allegation. *See* Open Records Decision No. 661 (1999) (must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue). Thus, none of the remaining information may be withheld on the basis of section 552.110(b).

Section 552.137 of the Government Code states that “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act],” unless the owner of the e-mail address has affirmatively consented to its public disclosure. *Id.* § 552.137 (a)-(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137 (c). Likewise, section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. We have marked e-mail addresses that the department must withhold under section 552.137 of the Government Code, unless the owner of the e-mail addresses has consented to their disclosure.

You claim that some of the remaining information is excepted under section 552.147 of the Government Code, which provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. We agree that the department may withhold social security numbers under section 552.147 of the Government Code.²

Finally, we note that some of the remaining information is subject to sections 552.130 and 552.136 of the Government Code.³ Section 552.130 excepts from disclosure “information [that] relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state.” *Id.*

²We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

³The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

§ 552.130. Thus, the department must withhold the Texas motor-vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.136 states that "[n]otwithstanding 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." *Id.* § 552.136(b). The department must withhold the bank account and routing numbers that we have marked under section 552.136 of the Government Code.

In summary, the department must withhold the information we have marked under section 552.101 in conjunction with 1) section 156.206(c) of the Finance Code and 2) common law privacy. The department must withhold the marked e-mail addresses under section 552.137, unless the department receives consent for their release. The department must also withhold the information we have marked under sections 552.130 and 552.136 of the Government Code. The department may withhold social security numbers under section 552.147. The remaining information must be released.

Finally, you ask this office to issue a previous determination that would permit the department to withhold the same type of information as requested here relating to e-mail addresses of licensees without the necessity of again requesting an attorney general decision under the Act. *See id.* § 552.301(a); Open Records Decision No. 673 (2001). We decline to do so at this time.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,



Paige Savoie
Assistant Attorney General
Open Records Division

PS/ma

Ref: ID# 300958

Enc. Submitted documents

c: Mr. Steve Hemphill
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Houston, Texas 77070
(w/o enclosures)