



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 22, 2009

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

OR2009-07026

Dear Ms. Jones:

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# 344065.

The Texas Savings and Mortgage Lending Department (the "department") received a request for complaint and investigation information pertaining to a specified licensee. You state that a portion of the requested information has been released to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.137 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that some of the information you have submitted to us for review is not responsive to the instant request for information because it was created after the request for information was received. This ruling does not address the public availability of any information that is not responsive to the request, and the department is not required to release this information, which we have marked as non-responsive, in response to this request. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dism'd).

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<sup>1</sup>Although you cite section 156.301 of the Finance Code for your argument to withhold the submitted information, we understand you to raise section 552.101 of the Government Code in conjunction with section 156.301, as this is the proper exception for your argument.

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 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). You claim that the investigative file portions of the submitted information, which you have marked, are confidential under section 156.301(f). You do not inform this office, and we are not otherwise aware, 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 submitted information, we conclude that the department must withhold the responsive information you have marked under section 552.101 in conjunction with section 156.301(f) of the Finance Code.

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 found that personal financial information not relating to the financial transaction between an individual and a governmental body is generally intimate and embarrassing. *See* Open Records Decision No. 545 (1990). The information we have marked under section 552.101 in conjunction with common-law privacy constitutes personal financial information. Further, in this instance we find that there is not a legitimate public interest in the release of this information. Accordingly, you must withhold the financial information that we have marked under section 552.101 in conjunction with common-law privacy.

The remaining information also contains e-mail addresses that are excepted from disclosure under section 552.137 of the Government Code, which requires a governmental body to 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(b). You do not inform us that the owners of the e-mail addresses at issue have affirmatively consented to their release. Therefore, the department must withhold the e-mail addresses you have marked, as well as those we have marked, under section 552.137.

Finally, you ask this office to issue a previous determination permitting the department to withhold information obtained by the department during an inspection or investigation into a licensee under section 552.101 of the Government Code in conjunction with section 156.301(f) of the Finance Code without requesting a ruling from this office. We decline to issue such a previous determination 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; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

In summary, this ruling does not address the public availability of information that is not responsive to the instant request for information. The department must withhold the responsive information you have marked under section 552.101 in conjunction with section 156.301(f) of the Finance Code. The department must also withhold the e-mail addresses you have marked, as well as those we have marked, under section 552.137 of the Government Code. As you raise no other exceptions to disclosure, the remaining information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/cc

Ref: ID# 344065

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)