



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 22, 2009

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

OR2009-08518

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# 346573.

The Texas Department of Savings & Mortgage Lending (the "department") received a request for information pertaining to a named mortgage broker. You state the department has released some of the requested information. You also state that you are withholding social security numbers under section 552.147 of the Government Code.<sup>1</sup> You 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 submitted arguments and reviewed the submitted information.<sup>2</sup> We have also received and considered

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<sup>1</sup>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.

<sup>2</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 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.

comments from the named mortgage broker. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we must address the department's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(a), (b). You state that the department received the request for information on March 31, 2009. However, you did not request a ruling from this office until April 15, 2009. Thus, the department failed to comply with the procedural requirements mandated by section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Sections 552.101, 552.130, and 552.137 of the Government Code can provide a compelling reason to overcome this presumption. Therefore, we will consider the department's claims under these exceptions, as well as the named mortgage broker's claim under section 552.101.

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 exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with section 560.003 of the Government Code, which provides that "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." Gov't Code § 560.003; *see id.* § 560.001(1) ("biometric identifier" means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). Section 560.002 provides, however, that "[a] governmental body that possesses a biometric identifier of an individual . . . may not sell, lease, or otherwise disclose the biometric identifier to another person unless . . . the individual consents to the disclosure[.]" *Id.* § 560.002(1)(A). You seek to withhold the submitted fingerprints under section 560.003. There is no indication the requestor has a right of access to these fingerprints under section 560.002. *See id.* Therefore, the department must withhold the submitted fingerprints under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.<sup>3</sup>

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<sup>3</sup>As our ruling is dispositive, we need not consider your remaining argument against disclosure of this information.

Section 552.101 also encompasses section 156.206 of the Finance Code, which provides in relevant part:

(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 the information you have marked consists of criminal history information of the named mortgage broker that was obtained from the Department of Public Safety and the Federal Bureau of Investigation during the 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). Based on your representations and our review, we agree that most of the information you have marked is confidential pursuant to section 156.206(c) of the Finance Code. However, we note

that the remaining information you have marked, which we have marked for release, was not obtained from Department of Public Safety or the Federal Bureau of Investigation and may not be withheld under section 552.101 on the basis of section 156.206(c). Accordingly, with the exception of the information we have marked for release, the information you have marked must be withheld under section 552.101 of the Government Code in conjunction with section 156.206(c) of the Finance Code.

Section 552.101 also encompasses section 156.213 of the Finance Code. This section states:

(a) Each licensed mortgage broker shall file an annual report with the commissioner on a form prescribed by the commissioner. The report must include:

(1) data on loan origination in this state for the mortgage broker and each loan officer sponsored by the mortgage broker; and

(2) any other information required by the commissioner.

(b) Information contained in the annual report related to loan origination volume or other trade information is confidential and may not be disclosed by the commissioner or any other employee of the Savings and Loan Department.

*Id.* § 156.213.<sup>4</sup> You assert that the information you have marked consists of annual reports filed with the department by a mortgage broker. Loan origination volume information in annual reports filed with the department is considered confidential under section 156.213(b). Therefore, the department must withhold the loan origination volume information you have marked pursuant to section 552.101 of the Government Code in conjunction with section 156.213 of the Finance Code.

Section 552.101 also encompasses section 156.301 of the Finance Code. Section 156.301 provides in relevant 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

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<sup>4</sup>We note that two different sections of the Finance Code are denominated by section 156.213. One was added to the Finance Code by the Act of May 26, 2001, 77th Leg., R.S., ch. 337, § 9, 2001 Tex. Gen. Laws 610, 614. The other section 156.213, which is quoted above, was added to the Finance Code by the Act of May 28, 2001, 77th Leg., R.S., ch. 407, § 3, 2001 Tex. Gen. Laws 740, 741.

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.

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(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 are confidential under section 156.301(f). You do not inform this office, and we are not otherwise aware, of any other law that permits or requires disclosure of that information. Accordingly, we conclude that the department must withhold the submitted investigative files you have marked under section 552.101 of the Government Code in conjunction with section 156.301(f) of the Finance Code.

The department and the named mortgage broker assert that portions of the remaining information are subject to common-law privacy, which is also encompassed by section 552.101. Common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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. See Open Records Decision Nos. 600 (1992) (employee's designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). Upon review, we find portions of the remaining information, which we have marked, constitute personal financial information. Furthermore,

we find that this information is not of legitimate concern to the public. Therefore, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. Both the department and the named mortgage broker have failed to demonstrate, however, how the remaining information is highly intimate or embarrassing and not of legitimate public interest. Therefore, the department may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). Accordingly, the department must withhold the Texas driver's license information we have marked under section 552.130.

Section 552.137 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 of a type specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). The e-mail address we have marked is not of a type specifically excluded by section 552.137(c). You do not inform us the department has received consent for its release. Therefore, the department must withhold the marked e-mail address pursuant to section 552.137 of the Government Code.

In summary, the department must withhold the fingerprints we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. With the exception of the information we have marked for release, the information you have marked must be withheld under section 552.101 of the Government Code in conjunction with section 156.206(c) of the Finance Code. The department must also withhold the information you have marked under section 552.101 in conjunction with sections 156.213 and 156.301 of the Finance Code. The department must withhold the information we have marked under (1) section 552.101 in conjunction with common-law privacy, (2) section 552.130 of the Government Code, and (3) section 552.137 of the Government Code. 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,

A handwritten signature in cursive script that reads "Jennifer Luttrall".

Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/dls

Ref: ID# 346573

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Named Broker  
(w/o enclosures)