



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 22, 2009

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

OR2009-15026

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# 357746.

The Texas Department of Savings and Mortgage Lending (the "department") received a request for a complaint involving the requestor's client. You claim that any responsive 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.

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 protected by other statutes, such as section 402.033 of the Government Code, which provides in relevant part:

(a) In this section:

(1) "Authorized governmental agency" means:

...

(D) the Department of Public Safety, the  
Texas Department of Insurance, the Office of

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<sup>1</sup>Although you cite section 402.031 of the Government 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 402.031, as this is the proper exception for your argument. In addition, although you claim the information is excepted under section 402.031 of the Government Code, we note the 81st Texas Legislature renumbered section 402.031 to section 401.033 of the Government Code. Act of May 20, 2009, 81st Leg., R.S., ch. 87, § 27.001(39), 2009 Tex. Sess. Law Serv. 375 (Vernon).

Consumer Credit Commissioner, the Texas Department of Banking, the credit union department, the Department of Savings and Mortgage Lending, the Texas Real Estate Commission, or the Texas Appraiser Licensing and Certification Board, or the Texas Department of Housing and Community Affairs.

(2) "Fraudulent activity" means any act that constitutes a violation of a penal law and is part of an attempt or scheme to defraud any person.

(b) If a person determines or reasonably suspects that fraudulent activity has been committed or is about to be committed, the person shall report the information to an authorized governmental agency. If a person reports the information to the attorney general, the attorney general shall notify each agency with representation on the residential mortgage fraud task force under Section 402.032. If a financial institution or person voluntarily or pursuant to this section reports fraudulent activity to an authorized governmental agency, the financial institution or person may not notify any person involved in the fraudulent activity that the fraudulent activity has been reported, and the *authorized governmental agency who has any knowledge that such report was made shall not disclose to any person involved in the fraudulent activity that the fraudulent activity has been reported.* Any financial institution or person that makes a voluntary report of any possible violation of law or regulation to an authorized governmental agency shall not be liable to any person under any law or regulation of the state or the United States for such report.

Gov't Code § 402.033(a), (b) (emphasis added). You contend that any responsive information is confidential under section 402.033(b) of the Government Code, since this section prohibits an authorized governmental agency, including the department, from disclosing the existence of a report to one involved in the fraudulent activity that is the subject of the report. *Id.* § 402.033(b). Section 402.033 of the Government Code defines "fraudulent activity" as any act that constitutes a violation of a penal law and is part of an attempt or scheme to defraud any person. *Id.* § 402.033(a)(2). The requestor's request letter reveals that the requestor's client was accused of knowingly falsifying a loan application.<sup>2</sup> You do not inform us that the activity at issue constitutes a fraudulent activity for the

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<sup>2</sup>You inform us that the individual at issue was not licensed at the time he allegedly falsified a loan application, is not currently licensed, and therefore, was not investigated under section 156.301 of the Finance Code (allowing the commissioner to investigate a complaint made against a licensed mortgage broker or loan officer, and requiring the commissioner to notify a licensed mortgage broker or loan officer of a complaint before commencing an investigation).

purposes of section 402.033. However, we understand that falsifying a loan application would constitute an offense under the Penal Code. *See* Penal Code § 32.32(b) (providing that a person commits an offense “if he intentionally or knowingly makes a materially false or misleading written statement to obtain property or credit, including a mortgage loan”). Therefore, to the extent any responsive information exists, it is confidential with regard to this requestor. Accordingly, the department must withhold any responsive information from the requestor under section 402.033 in conjunction with section 552.101 of the Government Code. As our ruling is dispositive, we need not address your remaining argument against disclosure.

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, toll free, at (888) 672-6787.

Sincerely,



Jennifer Burnett  
Assistant Attorney General  
Open Records Division

JB/eeg

Ref: ID# 357746

Enc. Submitted documents

c: Requestor  
(w/o enclosures)