



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 13, 2010

Mr. F.C. "Chris" Schneider  
Public Information Officer  
Associate General Counsel  
Texas Department of Savings and Mortgage Lending  
2601 North Lamar, Suite 201  
Austin, Texas 78705

OR2010-00651

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# 367136.

The Texas Department of Savings and Mortgage Lending (the "department") received a request for any documents pertaining to a named individual and any documents pertaining to the licensing, registration, and/or regulation of another named individual. You state that some of the requested information has been released to the requestor. You claim that portions of the remaining requested information are excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>2</sup>

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<sup>1</sup>Although you cite sections 156.301 and 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 sections 156.301 and 402.031, as this is the proper exception for your arguments. 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).

<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.

Section 552.101 of the Government Code exempts 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 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 request encompasses information obtained in investigations conducted by the department. You state the department will release the original complaint and any accompanying documentation, but argue that the documents accumulated during the investigations and the final investigation reports in Exhibits 2 and 3 are confidential under section 156.301(f). Upon review, we agree that the information obtained by the department during its investigations and the portions of the final reports which reveal this same information, which we have marked, are confidential under section 156.301. However, we conclude the remainder of the final investigation reports and certain communications sent by the department do not constitute information "obtained by

the commissioner during an inspection or an investigation[.]” *Id.* § 156.301(f). Accordingly, this information may not be withheld under section 156.301(f) of the Finance Code.

Section 552.101 also encompasses 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 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). You contend that the information in Exhibit 4 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). Although you state the investigation report pertains to suspected fraudulent mortgage activity, you do not inform our office of the penal law alleged to have been violated. Furthermore, the requestor in this instance is not a "person *involved* in the fraudulent activity" as specified by the statute. *Id.* § 402.033(b) (emphasis added). Thus, section 402.033 does not prohibit the release of the information to this requestor. The department may not withhold the information in Exhibit 4 under section 402.033 in conjunction with section 552.101 of the Government Code in this instance.

We note some of the documents being released contain e-mail addresses. Section 552.137 of the Government Code is applicable to certain e-mail addresses.<sup>3</sup> 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 e-mail addresses that are confidential under section 552.137. The department must withhold these e-mail addresses 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.<sup>4</sup>

In summary, the department must withhold the information in Exhibits 2 and 3 we have marked under section 552.101 of the Government Code in conjunction with section 156.301(f) of the Finance Code. The department must also withhold the e-mail addresses we have marked 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. The remaining information must be released.

Finally, you ask this office to issue previous determinations 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 and information resulting from referrals of fraudulent activity to the department under section 552.101 in conjunction with section 402.033 of the Government Code without requesting a ruling from this office. We decline to issue such previous determinations 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.

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<sup>3</sup>This office 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).

<sup>4</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

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,

A handwritten signature in cursive script that reads "Lauren J. Holmsley". The signature is written in black ink and is positioned above the typed name.

Lauren J. Holmsley  
Assistant Attorney General  
Open Records Division

LJH/JB

Ref: ID# 367136

Enc. Submitted documents

c: Requestor  
(w/o enclosures)