



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 8, 2010

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

OR2010-15407

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# 396199.

The Texas Department of Savings and Mortgage Lending (the "department") received a request for all information pertaining to the licensing of the requestor.<sup>1</sup> You state the department has provided some of the requested information to the requestor. You claim that portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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 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>1</sup>We note the department sought and received clarification regarding the request for information. See Gov't Code § 552.222 (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

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.

Fin. Code § 156.301(a)-(c), (f). You claim that the investigative report you have marked is 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 report you have marked under section 552.101 of the Government Code in conjunction with section 156.301(f) of the Finance Code.

Section 552.101 also encompasses criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center, which is confidential under federal and state law. CHRI means "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." Gov't Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. *See* Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10-12. Section 411.083 of the Government Code deems confidential CHRI that the Texas Department of Public Safety ("DPS") maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *See id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or

another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* § 411.090-.127. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with chapter 411, subchapter F. The department must withhold the CHRI we have marked pursuant to section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code.<sup>2</sup>

In summary, the department must withhold the information you have marked under section 552.101 in conjunction with section 156.301(f) of the Finance Code. The department must withhold the CHRI we have marked pursuant to section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code.

Finally, you ask this office to issue previous determinations that would permit the department to withhold information under section 552.101 of the Government Code in conjunction with section 156.301 of the Finance Code and section 411.0845 of the Government Code without the necessity of again requesting an attorney general decision with respect to the public availability of such information. We decline to issue such decisions at this time. *See Gov't Code* §§ 552.301(a), .302; Open Records Decision No. 673 (2001) (previous determinations). 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.

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,



Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/eeg

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<sup>2</sup>As our ruling is dispositive of this information, we need not address your argument against disclosure. We further note that the requestor can obtain his own CHRI from the Texas Department of Public Safety. *See Gov't Code* § 411.083(b)(3).

Ref: ID# 396199

Enc. Submitted documents

c: Requestor  
(w/o enclosures)