



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 8, 2010

Ms. Marlene K. Sparkman
Assistant General Counsel
Texas State Securities Board
P.O. Box 13167
Austin, Texas 78711

OR2010-15409

Dear Ms. Sparkman:

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# 396624.

The Texas State Securities Board (the "board") received a request for letters concerning two specified entities for a specified period of time.¹ You claim the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.²

Initially, we note, and you acknowledge, some of the submitted information in item D and all of the submitted information in item E are not responsive to the instant request because they do not fall within the specified period of time at issue in the request. The board need

¹We note the board received clarification from the requestor regarding this request. *See* Gov't Code § 552.222(b) (providing that if large amount of information has been requested, governmental body may discuss with requestor how scope of request might be narrowed).

²We assume the "representative sample" of information 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 those records contain substantially different types of information than those submitted to this office.

not release nonresponsive information in response to this request, and this ruling will not address that information.

Section 552.101 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. You state the present request concerns information connected with inspections by the board to ensure compliance with the Texas Securities Act or a board rule. You seek to withhold item B under section 552.101 in conjunction with article 581-13-1 of the Texas Securities Act. The relevant language from article 581-13-1 is as follows:

A. The Commissioner, without notice, may inspect a registered dealer or registered investment adviser as necessary to ensure compliance with this Act and Board rules.

...

E. Information obtained under this section and any intra-agency or interagency notes, memoranda, reports, or other communications consisting of advice, analyses, opinions, or recommendations that are made in connection with the inspection are confidential and may not be disclosed to the public or released by the Commissioner except to the same extent provided for the release or disclosure of confidential documents or other information made or obtained in connection with an investigation under Section 28 of this Act.

V.T.C.S. art. 581-13-1(A), (E). You state item B contains letters the board’s Inspections and Compliance Division sent to registered persons as a result of inspections conducted pursuant to article 581-13-1. However, subsection (E) protects “information obtained” from the inspection and “communications consisting of advice, analyses, opinions, or recommendations that are made in connection with the inspection.” *Id.* art. 581-13-1(E). The letters in item B were neither obtained from an inspection nor do they consist of advice, analyses, opinions, or recommendations. Therefore, based on our review, we conclude item B is not confidential under article 581-13-1 of the Texas Securities Act. Accordingly, the board may not withhold item B under section 552.101 of the Government Code. Because no other exceptions are raised for this information, the board must release item B to the requestor.³

³The board asks for a previous determination for information protected under article 581-13-1 of the Texas Securities Act. Because the board has incorrectly applied article 581-13-1, we decline your request for a previous determination.

You further state the present request concerns information connected with investigations by the board to prevent or detect violations of the Texas Securities Act or a board rule or order. You seek to withhold items C and D under section 552.101 in conjunction with article 581-28 of the Texas Securities Act. The relevant language of article 581-28 is as follows:

A. Investigations by Commissioner. The Commissioner shall conduct investigations as the Commissioner considers necessary to prevent or detect the violation of this Act or a Board rule or order. For this purpose, the Commissioner may require, by subpoena or summons issued by the Commissioner, the attendance and testimony of witnesses and the production of all records, whether maintained by electronic or other means, relating to any matter which the Commissioner has authority by this Act [footnote omitted] to consider or investigate, and may sign subpoenas, administer oaths and affirmations, examine witnesses and receive evidence; provided, however, that all information of every kind and nature received in connection with an investigation and all internal notes, memoranda, reports, or communications made in connection with an investigation shall be treated as confidential by the Commissioner and shall not be disclosed to the public except under order of court for good cause shown....

V.T.C.S. art. 581-28(A). You state the letters in items C and D were made in connection with investigations to prevent or detect a violation of the Texas Securities Act or board rule or order. Based on your representation and our review of the requested information, we conclude these letters are communications made in connection with investigations; therefore, items C and D are confidential under article 581-28 of the Texas Securities Act.⁴ Accordingly, the board must withhold items C and D pursuant to section 552.101 of the Government Code.

In summary, the board may not withhold the letters in item B under section 552.101 of the Government Code in conjunction with article 581-13-1 of the Texas Securities Act and must release them to the requestor. The board must withhold the letters in items C and D under section 552.101 of the Government Code in conjunction with article 581-28 of the Texas Securities Act.

⁴In Open Records Letter No. 2004-0239, issued January 12, 2004, we granted the board a previous determination finding "information obtained" by the board in connection with an investigation to prevent or detect a violation of the Texas Securities Act or a board rule or order is excepted from disclosure under section 552.101 in conjunction with article 581-28 of the Texas Securities Act. Open Records Letter No. 2004-0239 at 2 (2004). In this case, the letters in items C and D are not "information obtained" by the board in connection with an investigation; therefore, they are outside the scope of this previous determination and may not be withheld on that basis.

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, 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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/eeg

Ref: ID# 396624

Enc. Submitted documents

c: Requestor
(w/o enclosures)