



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 5, 2011

Ms. Kara L. Kennedy
General Counsel
Texas State Securities Board
P.O. Box 13167
Austin, Texas 78711-3167

OR2011-09402

Dear Ms. Kennedy:

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# 422760.

The Texas State Securities Board (the "board") received a request for all information relating to the investigation of a named individual.¹ You state the board is withholding some of the requested information it obtained in connection with the investigation pursuant to the previous determination we issued to the board in Open Records Letter No. 2004-0239 (2004).² You claim that the remaining requested information is excepted from disclosure

¹You state the board sought and received clarification of the request for information. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if a large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

²In Open Records Letter No. 2004-0239, we granted the board a previous determination authorizing it to withhold 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 under section 552.101 of the Government Code in conjunction with article 581-28 of the Texas Securities Act, without the necessity of requesting an attorney general decision. *See* Gov't Code § 552.301(a); *see* Open Records Decision No. 673 at 7-8 (2001) (delineating elements of second type of previous determination under section 552.301(a)).

under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.³

You inform us that the information at issue in Tabs B and C is not subject to the previous determination granted in Open Records Letter No. 2004-0239 because it is not “information obtained” by the board in connection with an investigation. However, you contend that this information is confidential pursuant to article 581-28 of the Texas Securities Act. 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. Article 581-28 provides in pertinent part:

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 at issue in Tabs B and C were made by the board in connection with the specified investigation 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 information at issue, we agree these letters are communications made in connection with an investigation. Therefore the information at issue in Tabs B and C is confidential under article 581-28 of the Texas Securities Act and must be withheld pursuant to section 552.101 of the Government Code.

You request that this office issue a “previous determination” that would permit the board in the future to withhold from disclosure all information prepared by the board and received in

³This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. See Gov’t Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).