



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

This ruling has been modified by court action
The ruling and judgment can be viewed in PDF
format below.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 19, 2011

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

**The ruling you have requested
has been amended as a result
of litigation and has been
attached to this document.**

OR2011-12052

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# 427445.

The Texas State Securities Board (the "board") received a request for files, correspondence, or investigative materials relating to three named individuals and six named business entities. You indicate some of the requested information will be released on payment of costs. You state you are withholding some of the responsive information pursuant to the previous determination issued to the board in Open Records Letter No. 2004-0239 (2004).¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code.² We have considered the exceptions you claim and reviewed the information you submitted.³

¹Open Records Letter No. 2004-0239 grants a previous determination authorizing the board to withhold information obtained 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, V.T.C.S. art. 581-1 *et seq.*, without the necessity of requesting an attorney general decision. *See* Gov't Code § 552.301(a); *see also* Open Records Decision No. 673 at 7-8 (2001) (listing elements of second type of previous determination under Gov't Code § 552.301(a)).

²Although you claim the attorney-client privilege under section 552.101 of the Government Code in conjunction with Texas Rule of Evidence 503, we note section 552.101 does not encompass discovery privileges. *See* Open Records Decision No. 676 at 1-3 (2002). Section 552.107(1) of the Government Code is the relevant exception to claim.

³This letter ruling assumes the submitted representative samples of information are truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the board to withhold any information that is substantially different from the submitted information. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

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 exception encompasses information other statutes make confidential. You contend Items B, C, D, E, and H are confidential under article 581-28 of the Texas Securities Act (the “TSA”). Article 581-28 provides in 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 Items B, C, D, E, and H are letters made by the board in connection with an investigation to prevent or detect a violation of the TSA or a board rule or order. Based on your representations and our review of the information at issue, we conclude the board must withhold Items B, C, D, E, and H under section 552.101 of the Government Code in conjunction with article 581-28(A) of the TSA.⁴ Although you also seek to withhold Item G on this basis, we find you have not demonstrated Item G is related to an investigation conducted by the board. We therefore conclude the board may not withhold Item G under section 552.101 on the basis of article 581-28(A).

You also claim section 552.101 of the Government Code in conjunction with article 581-28(B) of the TSA, which provides as follows:

B. Confidentiality of Certain Registration-Related and Other Materials. To the extent not already provided for by this Act, any intraagency or interagency notes, memoranda, reports, or other communications consisting of advice, analyses, opinions, or recommendations 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. The Commissioner may, at the Commissioner's discretion, disclose any confidential information in the Commissioner's possession to any governmental or regulatory authority or association of

⁴As we are able to make this determination, we need not address your claim for Item H under section 552.107(1) of the Government Code.

governmental or regulatory authorities approved by Board rule or to any receiver appointed under Section 25-1 of this Act. The disclosure does not violate any other provision of this Act or Chapter 552, Government Code.

V.T.C.S. art. 581-28(B). You contend Items F-1 through F-10 are confidential under article 581-28(B). You state this information consists of communications between the board and applicants for registration. Having considered your arguments and reviewed the information at issue, we find you have not demonstrated Items F-1 through F-10 contain advice, analyses, opinions, or recommendations. We therefore conclude the board may not withhold Items F-1 through F-10 under section 552.101 of the Government Code on the basis of article 581-28(B) of the TSA.

Lastly, we address your claim under section 552.101 of the Government Code in conjunction with article 581-13-1 of the TSA, which provides in part:

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 also contend Item G is confidential under article 581-13-1(E). You state the information at issue is a letter sent by the board to a registered firm as a result of an examination or inspection conducted under the TSA. Having considered your arguments and reviewed the information at issue, we find you have not demonstrated either that Item G was obtained under article 581-13-1 or that it consists of advice, analyses, opinions, or recommendations. We therefore conclude the board may not withhold Item G under section 552.101 of the Government Code on the basis of article 581-13-1 of the TSA.

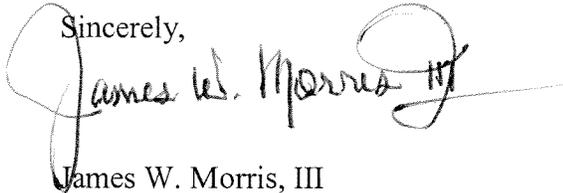
In summary, the board must withhold Items B, C, D, E, and H under section 552.101 of the Government Code in conjunction with article 581-28(A) of the TSA. The board must release the rest of the submitted information.

You also ask this office to issue a previous determination that would permit the board to withhold communications made in connection with an investigation under section 552.101

of the Government Code in conjunction with article 581-28(A) of the TSA and information relating to an inspection under section 552.101 in conjunction with article 581-13-1 of the TSA. We decline to issue such a decision at this time. 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,

A handwritten signature in black ink that reads "James W. Morris, III". The signature is written in a cursive style with a large, looping initial "J".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 427445

Enc: Submitted documents

c: Requestor
(w/o enclosures)

