



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 31, 2013

Ms. Marlena K. Sparkman
General Counsel
Texas State Securities Board
P.O. Box 13167
Austin, Texas 78711-3167

OR2013-13205

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# 494843.

The Texas State Securities Board (the "board") received a request for 47 categories of information regarding a specified court case. You indicate you will release some information to the requestor upon payment of costs. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative samples of information.¹

Initially, you state the information in Exhibits C and D was the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2011-01807 (2011) and 2011-02964 (2011). In Open Records Letter No. 2011-01807, we held the board must withhold certain information under section 552.101 of the Government Code in conjunction with article 581-28 of the Texas Securities Act (the

¹We assume that the "representative samples" of records submitted to this office are 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.

“TSA”) pursuant to the previous determination issued to the board in Open Records Letter No. 2004-0239 (2012), and must withhold the remaining information at issue under section 552.101 in conjunction with article 581-28. In Open Records Letter No. 2011-02964, we held the board must withhold certain information under section 552.101 in conjunction with article 581-28 pursuant to the previous determination issued in Open Records Letter No. 2004-0239, must withhold certain other information under article 581-28, and must release the remaining information. You state the law, facts, and circumstances upon which these prior rulings were based have not changed. Accordingly, we conclude the board must continue to rely on Open Records Letter Nos. 2011-01807 and 2011-02964 as previous determinations and withhold or release the information in Exhibits C and D in accordance with those rulings.² *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, you claim the information in Exhibits E-R is subject to Open Records Letter No. 2004-0239 (2004). In Open Records Letter No. 2004-0239, we granted the board a previous determination finding that information obtained by the board in connection with an investigation to prevent or detect a violation of the TSA or a board rule or order is excepted from disclosure under section 552.101 of the Government Code in conjunction with article 581-28 of the TSA. *See* V.T.C.S. art. 581-28 (information received in connection with board investigation is confidential). That previous determination authorizes the board to withhold such information without the necessity of requesting a decision from the attorney general, provided the pertinent facts and circumstances have not changed since the issuance of the prior ruling. In this case, we agree most of the information at issue was obtained in connection with an investigation to prevent or detect a violation of the TSA or board rule or order. You state there has not been any change in the law, facts, and circumstances on which the prior ruling is based. We therefore conclude the board must withhold the information in Exhibits E-O and Exhibit R under section 552.101 of the Government Code in conjunction with article 581-28 of the TSA in accordance with the previous determination issued in Open Records Letter No. 2004-0239.³ *See also* ORD 673 at 7-8 (listing elements of second type of previous determination under Gov’t Code § 552.301(a)). However, we note the subpoenas and correspondence you have marked as Exhibit P and the letters you have marked as Exhibit Q are not information obtained by the board in connection with an investigation to prevent or detect a violation of the TSA or a board rule or order; therefore, these documents are outside the scope of this previous determination and may not be

²As we are able to make this determination, we need not address your remaining arguments against the disclosure of this information.

³As we are able to make this determination, we need not address your remaining arguments against disclosure of this information.

withheld on that basis. As such, we will consider your arguments for this information, as well as the remaining information.

You contend that the information in Exhibits P, Q, and S is confidential pursuant to article 581-28 of the TSA. 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 [the TSA] 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 [the TSA] [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 information in Exhibits P, Q, and S was made by the board in connection with an investigation to prevent or detect a violation of the TSA or board rule or order. Based on your representation and our review of the information at issue, we agree this information consists of internal notes, memoranda, reports, or communications made in connection with an investigation. Therefore the information in Exhibits P, Q, and S is confidential under article 581-28 of the TSA and must be withheld pursuant to section 552.101 of the Government Code.⁴

In summary, the board must continue to rely on Open Records Letter Nos. 2011-01807 and 2011-02964 as previous determinations and withhold or release Exhibits C and D in accordance with those rulings. The board must withhold Exhibits E-O and Exhibit R under section 552.101 of the Government Code in conjunction with article 581-28 of the TSA in accordance with the previous determination issued in Open Records Letter No. 2004-0239. The board must withhold Exhibits P, Q, and S under section 552.101 of the Government Code in conjunction with article 581-28 of the TSA.

⁴As our ruling is dispositive, we do not address your remaining arguments against disclosure of this information..

Finally, you request that this office issue a "previous determination" that would permit the board in the future to withhold from disclosure internal notes, memoranda, reports, or communications made by the board in connection with an investigation to prevent or detect a violation of the TSA, board rule, or order without the need of requesting a ruling from us about whether such information can be withheld from disclosure. We decline to issue such a previous determination at this time. Accordingly, 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/bhf

Ref: ID# 494843

Enc. Submitted documents

c: Requestor
(w/o enclosures)