



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 31, 2013

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

OR2013-19015

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# 504232.

The Texas State Securities Board (the "board") received six requests from the same requestor for lists of several categories of information during a specified time period.<sup>1</sup> You indicate the board has made some information available to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.108 of the Government Code.<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted information.

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<sup>1</sup>You state the board sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

<sup>2</sup>Although you raise section 552.101 of the Government Code in conjunction with rule 503 of the Texas Rules of Evidence and rule 1.05 of the Texas Disciplinary Rules of Professional Conduct, this office has concluded section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). We note the proper exception to raise when asserting the attorney-client privilege for information not subject to section 552.022 of the Government Code is section 552.107 of the Government Code. *See* ORD 676 at 1-2. Additionally, although you cite to rule 1.05 of the Texas Disciplinary Rules of Professional Conduct, section 552.107 of the Government Code is the proper exception to claim for attorney-client privileged information.

You contend the information you have marked is confidential pursuant to article 581-28 of the Texas Securities Act (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 you have marked 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 you have marked is confidential under article 581-28 of the TSA and must be withheld pursuant to section 552.101 of the Government Code.<sup>3</sup> As you raise no further exceptions to disclosure, the board must release the remaining information.

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](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

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<sup>3</sup>As our ruling is dispositive, we do not address your remaining arguments against disclosure.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Burnett", with a long horizontal flourish extending to the right.

Jennifer Burnett  
Assistant Attorney General  
Open Records Division

JB/tch

Ref: ID# 504232

Enc. Submitted documents

c: Requestor  
(w/o enclosures)