



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 3, 2014

Ms. Marlene K. Sparkman
General Counsel
Texas State Securities Board
208 E. 10th Street, 5th Floor
Austin, Texas 78701-2407

OR2014-00231

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# 509907.

The Texas State Securities Board (the "board") received a request for any communications between any member of the public and the board relating to any complaints filed regarding three named businesses or three named individuals. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, you claim the information in Exhibit B 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 Texas Securities Act (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

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

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 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 Exhibit B 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. 2004-0239.² *See also* Open Records Letter No. 673 at 7-8 (2001) (listing elements of second type of previous determination under Gov't Code § 552.301(a)).

You contend the information in Exhibit C is confidential pursuant to article 581-28 of the TSA. 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 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] 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) (citation omitted). You state the information in Exhibit C 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 Exhibit C is confidential under article 581-28 of the TSA and must be withheld under section 552.101 of the Government Code.³

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

³As our ruling is dispositive, we do not address your remaining argument against disclosure of this information.

In summary, the board must withhold the information in Exhibit B 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 and the information in Exhibit C under section 552.101 of the Government Code in conjunction with article 581-28 of the TSA.

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,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/akg

Ref: ID# 509907

Enc. Submitted documents

c: Requestor
(w/o enclosures)