



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

March 16, 2006

Mr. John C. Fleming  
General Counsel  
Texas Savings and Loan Department  
2601 North Lamar, Suite 201  
Austin, Texas 78705

OR2006-02637

Dear Mr. Fleming:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 244268.

The Texas Department of Savings and Mortgage Lending (the "department") received a request for information regarding the loan volume of a specific mortgage broker for the last five years. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the department's obligations under section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. Additionally, pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You indicate that the department received the present request for information on December 22, 2005. Accordingly, you were required to submit your request for a decision from this office no later than January 6, 2006. We received your

request for a decision on January 9, 2006. Consequently, we determine that the department failed to request a decision within the ten business day period as mandated by section 552.301(b) of the Government Code. Also, you submitted a copy of the specific information requested for our review on January 17, 2006. Consequently, you failed to submit the requested information within the fifteen business day period mandated by section 552.301(e) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Section 552.101 can provide a compelling reason to overcome the presumption of openness. *See* Open Records Decision No. 630 (1994) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). We will therefore address your arguments under section 552.101.

The submitted documents contain confidential information subject to section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes, such as section 156.213 of the Finance Code. This section states:

(a) Each licensed mortgage broker shall file an annual report with the commissioner on a form prescribed by the commissioner. The report must include:

(1) data on loan origination in this state for the mortgage broker and each loan officer sponsored by the mortgage broker; and

(2) any other information required by the commissioner.

(b) Information contained in the annual report related to loan origination volume or other trade information is confidential and may not be disclosed by the commissioner or any other employee of the Savings and Loan Department.

Fin. Code § 156.213.<sup>1</sup> The submitted documents consist of annual reports filed with the department by a mortgage broker. Loan origination volume information in annual reports filed with the department is considered confidential under section 156.213(b). Therefore, the loan origination volume information contained within the submitted documents is excepted from release pursuant to section 552.101 of the Government Code in conjunction with section 156.213 of the Finance Code. We have marked this information accordingly.

Finally, you request that this office issue a “previous determination” that would permit the department in the future to withhold from disclosure information covered by section 156.213 of the Finance Code 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.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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<sup>1</sup>We note that two different sections of the Finance Code are denominated by section 156.213. One was added to the Finance Code by the Act of May 26, 2001, 77th Leg., R.S., ch. 337, § 9, 2001 Tex. Gen. Laws 610, 614. The other section 156.213, which is quoted above, was added to the Finance Code by the Act of May 28, 2001, 77th Leg., R.S., ch. 407, § 3, 2001 Tex. Gen. Laws 740, 741.

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James Forrest  
Assistant Attorney General  
Open Records Division

JF/sdk

Ref: ID# 244268

Enc. Submitted documents

c: Ms. Janice Schwartz  
Legal Action Works  
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Dallas, Texas 75226  
(w/o enclosures)