



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 23, 2009

Ms. Caroline C. Jones  
Public Information Officer  
Texas Department of Savings & Mortgage Lending  
2601 North Lamar, Suite 201  
Austin, Texas 78705

OR2009-03722

Dear Ms. Jones:

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# 337781.

The Texas Department of Savings and Mortgage Lending (the "department") received a request for several categories of information pertaining to two named individuals. You state that most of the requested information has been released to the requestor. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.110, and 552.137 of the Government Code. You also state, and provide documentation showing, that you notified certain individuals (collectively the "third parties") of the request and of their right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 at 3 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See id.* § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See*

Gov't Code § 552.305(d)(2)(B). As of the date of this letter, neither of the third parties have submitted to this office any reasons explaining why their information should not be released. On behalf of the third parties, however, you assert that portions of the submitted information may be exempted under section 552.110 of the Government Code. We note that section 552.110 is designed to protect the interests of third parties, not the interests of a governmental body. Therefore, because we have received no arguments raising section 552.110 from any of the third parties, the department may not withhold any of the submitted information under section 552.110 of the Government Code.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. 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> You assert portions of the submitted documents, which you have marked, 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 department must withhold the loan origination volume information we have marked pursuant to section 552.101 of the Government Code in conjunction with section 156.213 of the Finance Code. However, the remaining information is not loan origination volume information, and thus none of it may be withheld pursuant to this exception.

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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.

Section 552.101 of the Government Code also encompasses common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally protected by common-law privacy. See Open Records Decision Nos. 600 (1992) (employee's designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). Upon review, we find portions of the remaining information, which we have marked, constitute personal financial information. Furthermore, we find that this information is not of legitimate concern to the public. Therefore, the department must withhold the marked information under section 552.101 in conjunction with common-law privacy.

We note that a portion of the remaining information is subject to section 552.136 of the Government Code, which states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential."<sup>2</sup> Gov't Code § 552.136. Therefore, the department must withhold the account number we have marked under section 552.136 of the Government Code.

Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). The marked e-mail address is not of a type specifically excluded by section 552.137(c). Therefore, the department must withhold the e-mail address you have marked, in addition to those we have marked, pursuant to section 552.137 of the Government Code, unless the department has received consent for their release.

In summary, the department must withhold (1) the information marked under section 552.101 of the Government Code in conjunction with section 156.213 of the Finance Code, (2) the information marked under section 552.101 in conjunction with common-law privacy, (3) the account number marked under section 552.136 of the Government Code, and (4) the e-mail addresses marked under section 552.137 of the Government Code, unless the

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

department has received consent for their release. The remaining information must be released.

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](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 at (512) 475-2497.

Sincerely,



Matt Entsminger  
Assistant Attorney General  
Open Records Division

MRE/jb

Ref: ID# 337781

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

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