



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 7, 2011

Ms. Kara L. Kennedy
General Counsel
Texas State Securities Board
P.O. Box 13167
Austin, Texas 78711-3167

OR2011-01807

Dear Ms. Kennedy:

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# 408407.

The Texas State Securities Board (the "board") received a request for information relating to the criteria used in selecting which persons who submitted funds to Retirement Value, LLC would have their money returned by the company. You claim that the submitted information is excepted from disclosure pursuant to sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state that the information submitted in Tabs B and C is subject to a previous determination. In Open Records Letter No. 2004-0239 (2004), we granted the board a previous determination authorizing it to withhold information obtained by the board in connection with an investigation to prevent or detect a violation of the Texas Securities Act or a board rule or order under section 552.101 of the Government Code in conjunction with article 581-28 of the Texas Securities Act, without the necessity of requesting an attorney general decision. *See* Gov't Code § 552.301(a); *see* Open Records Decision No. 673 at 7-8 (2001) (delineating elements of second type of previous determination under section 552.301(a)). You state that the letters submitted in Tabs B and C were obtained by the board's enforcement division in connection with an investigation to prevent or detect a violation of the Texas Securities Act, board rule, or order. Therefore, pursuant to Open

Records Letter No. 2004-0239, the board must withhold the submitted information in Tabs B and C under section 552.101 in conjunction with article 581-28 of the Texas Securities Act. *See* ORD No. 673.

You inform us that the letter submitted in Tab D is not subject to the previous determination granted in Open Records Letter No. 2004-0239 because it is not “information obtained” by the board in connection with an investigation. However, you contend that the information in Tab D is confidential pursuant to article 581-28 of the Texas Securities Act. 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 this Act 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 this Act [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 letter in Tab D was made by the board in connection with an investigation to prevent or detect a violation of the Texas Securities Act or board rule or order. Based on your representation and our review of the information at issue, we agree this letter is a communication made in connection with an investigation. Therefore the letter submitted in Tab D is confidential under article 581-28 of the Texas Securities Act and must be withheld pursuant to section 552.101 of the Government Code.¹

Finally, you request that this office issue a “previous determination” that would permit the board in the future to withhold from disclosure communications made by the board in connection with an investigation to prevent or detect a violation of the Texas Securities Act, 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

¹As our ruling is dispositive, we do not address your remaining argument.

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.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, toll free, at (888) 672-6787.

Sincerely,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/dls

Ref: ID# 408407

Enc. Submitted documents

c: Requestor
(w/o enclosures)