



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 12, 2011

Mr. F.C. Schneider  
Associate General Counsel  
Texas Department of Savings & Mortgage Lending  
2601 North Lamar, Suite 201  
Austin, Texas 78705

OR2011-05104

Dear Mr. Schneider:

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# 414464.

The Texas Department of Savings and Mortgage Lending (the "department") received a request for all documents contained within a specified file. You state the department has released some information to the requestor. You claim 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 the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(a), (b). In this instance, you state the department received the request for information on January 21, 2011. Thus, the tenth business day was February 4, 2011. While you indicate the department forwarded its request for an opinion before the ten-business-day deadline, you have not provided sufficient evidence to establish that the request was deposited in the interagency mail by February 4, 2011. *See id.* § 552.308(b)(2) (describing rules for calculating submission dates of documents sent via interagency mail). Consequently, we find the department failed to comply with the procedural requirements of section 552.301.

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; the governmental body can overcome this presumption only by demonstrating a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). A compelling reason generally exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). We note the department's claim under section 552.101 of the Government Code can provide a compelling reason for non-disclosure. We also note some of the submitted information falls within the scope of sections 552.136 and 552.137 of the Government Code, which also can provide compelling reasons for non-disclosure.<sup>1</sup> Accordingly, we will address sections 552.101, 552.136, and 552.137.

Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with section 156.301 of the Finance Code. Chapter 156 of the Finance Code is also known as the Mortgage Broker License Act. *See* Fin. Code § 156.001. Section 156.301 provides in part:

(a) The [savings and loan] commissioner may conduct inspections of a person licensed under this chapter as the commissioner determines necessary to determine whether the person is complying with this chapter and applicable rules. The inspections may include inspection of the books, records, documents, operations, and facilities of the person and access to any documents required under rules adopted under this chapter. The commissioner may share evidence of criminal activity gathered during an inspection or investigation with any state or federal law enforcement agency.

(b) On the signed written complaint of a person, the commissioner shall investigate the actions and records of a person licensed under this chapter if the complaint, or the complaint and documentary or other evidence presented in connection with the complaint, provides reasonable cause. The commissioner, before commencing an investigation, shall notify a mortgage broker or loan officer in writing of the complaint and that the commissioner intends to investigate the matter.

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<sup>1</sup>The Office of the Attorney General will raise mandatory exceptions, such as sections 552.136 and 552.137 of the Government Code, on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(c) For reasonable cause, the commissioner at any time may investigate a person licensed under this chapter to determine whether the person is complying with this chapter and applicable rules.

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(f) Information obtained by the commissioner during an inspection or an investigation is confidential unless disclosure of the information is permitted or required by other law.

*Id.* § 156.301(a)-(c), (f). You claim that the submitted information consists of investigative file information that is confidential under section 156.301(f). You argue the documents accumulated during the investigation and the final investigation report in Exhibits 4 and 5 are confidential under section 156.301(f). You do not inform this office, and we are not otherwise aware, of any law that would permit or require the department to release any of this information. Therefore, we agree the information obtained by the department during its investigation and portions of the final report which reveal this same information are confidential under section 156.301(f). However, the remaining portions of the final investigation report and communications sent by the department do not constitute information "obtained by the commissioner during an inspection or an investigation[.]" *Id.* § 156.301(f). Accordingly, this information, which we marked for release, may not be withheld under section 552.101 in conjunction with section 156.301(f). Accordingly, except for the information we marked for release, the department must withhold the submitted information under section 552.101 in conjunction with section 156.301(f).

We note section 552.136 of the Government Code states "[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." Gov't Code § 552.136(b). Section 552.136(a) defines "access device" as "a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument." *Id.* § 552.136(a). Upon review, we find the department must withhold the information we have marked within the information marked for release under section 552.136 of the Government Code.

We also note section 552.137 provides that "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its release or the e-mail address is specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). We have marked e-mail addresses within

the information marked for release that are not of the types specifically excluded by section 552.137(c) of the Government Code. Accordingly, the department must withhold the e-mail addresses we have marked within the information marked for release under section 552.137 of the Government Code, unless the owners consent to their disclosure.<sup>2</sup>

In summary, except for the information we marked for release, the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 156.301(f) of the Finance Code. Within the information marked for release, the department must withhold the information we have marked under section 552.136 of the Government Code and the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners consent to their disclosure.

Lastly, you ask this office to issue a previous determination permitting the department to withhold information obtained by the department during an inspection or investigation into a licensee under section 552.101 of the Government Code in conjunction with section 156.301(f) of the Finance Code without requesting a ruling from this office. We decline to issue such a previous determination at this time. Accordingly, 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 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, toll free at (888) 672-6787.

Sincerely,



Sean Nottingham  
Assistant Attorney General  
Open Records Division

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<sup>2</sup>In Open Records Decision No. 684 (2009), this office issued a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a bank account number and routing number under section 552.136, and the e-mail addresses of members of the public under section 552.137, without the necessity of requesting an attorney general decision.

Ref: ID# 414464

Enc. Submitted documents

c: Requestor  
(w/o enclosures)