



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 14, 2011

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

OR2011-13228

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# 429887.

The Texas State Securities Board (the "board") received two requests from the same requestor for all records involving enforcement actions concerning two named companies and three named individuals. You state the board has provided some of the requested information to the requestor. You also state the board is withholding some of the responsive information pursuant to the previous determination issued to the board in Open Records Letter No. 2004-0239 (2004).<sup>1</sup> You claim the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>2</sup>

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<sup>1</sup>Open Records Letter No. 2004-0239 grants a previous determination authorizing the board to withhold information obtained 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(A) of the Texas Securities Act, V.T.C.S. art. 581-1 *et seq.*, without the necessity of requesting an attorney general decision. *See* Gov't Code § 552.301(a); *see also* Open Records Decision No. 673 at 7-8 (2001) (listing elements of second type of previous determination under Gov't Code § 552.301(a)).

<sup>2</sup>We 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.

You inform us the remaining requested information, which consists of letters represented by Exhibits B-1, B-2, C-1, C-2, and C-3, 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. You contend, however, this information is confidential pursuant to article 581-28(A) of the Texas Securities Act. Section 552.101 of the Government Code exempts 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 made confidential by other statutes, such as article 581-28, which provides, in relevant 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 remaining letters at issue were made by the board in connection with investigations to prevent or detect a violation of the Texas Securities Act or a board rule or order. Based on your representation and our review of the information at issue, we agree the letters represented by Exhibits B-1, B-2, C-1, C-2, and C-3 are communications made in connection with investigations. Therefore, the remaining requested information is confidential under article 581-28(A) of the Texas Securities Act and the board must withhold that information pursuant to section 552.101 of the Government Code.

You request 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 or a 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.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,

A handwritten signature in blue ink that reads "Leah B. Wingerson". The signature is written in a cursive style.

Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/dls

Ref: ID# 429887

Enc. Submitted documents

c: Requestor  
(w/o enclosures)