



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 11, 2014

Ms. Stephanie Tourk
Assistant General Counsel
Texas State Securities Board
208 East 10th Street, 5th Floor
Austin, Texas 78701-2407

OR2014-16067

Dear Ms. Tourk:

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# 535973.

The Texas State Securities Board (the "board") received a request for information pertaining to two named individuals and a specified entity for a specified period of time.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.136, 552.137, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Initially, you inform us the information in Exhibits D1-D13, G4-G9, G11, and G12 is subject to Open Records Letter No. 2004-0239 (2004). In Open Records Letter No. 2004-0239, we granted the board a previous determination finding that information obtained by the board

¹We note the board sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding when a governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

²We 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.

in connection with an investigation to prevent or detect a violation of the Texas Securities Act (the "TSA") or a board rule or order is excepted from disclosure under section 552.101 of the Government Code in conjunction with article 581-28 of the TSA. *See* V.T.C.S. art. 581-28 (information received in connection with board investigation is confidential). That previous determination authorizes the board to withhold such information without the necessity of requesting a decision from the attorney general, provided the pertinent facts and circumstances have not changed since the issuance of the prior ruling. In this case, we agree the information at issue was obtained in connection with an investigation to prevent or detect a violation of the TSA or board rule or order. You state there has not been any change in the law, facts, and circumstances on which the prior ruling is based. We therefore conclude the board must withhold the information in Exhibits D1-D13, G4-G9, G11, and G12 under section 552.101 of the Government Code in conjunction with article 581-28 of the TSA in accordance with the previous determination issued in Open Records Letter No. 2004-0239.³ *See also* Open Records Letter No. 673 at 7-8 (2001) (listing elements of second type of previous determination under Gov't Code § 552.301(a)).

Next, we note the information in Exhibits E10-E15 was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2014-16001 (2014). In that ruling, we determined, in part, the board must withhold the information at issue under section 552.101 of the Government Code in conjunction with article 581-28(A) of the TSA. As we have no indication the law, facts, or circumstances upon which the prior ruling was based have changed, the board must continue to rely on Open Records Letter No. 2014-16001 as a previous determination and withhold Exhibits E10-E15 in accordance with that ruling.⁴ *See* ORD 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

You assert the information in Exhibits E1-E9, G1-G3, and G10 is confidential pursuant to article 581-28(A) of the TSA. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes. Article 581-28(A) provides, in pertinent part, the following:

A. Investigations by Commissioner. The Commissioner shall conduct investigations as the Commissioner considers necessary to prevent or detect

³As we are able to make this determination, we need not address your remaining arguments against disclosure of this information.

⁴As we are able to make this determination, we need not address your remaining arguments against disclosure of this information.

the violation of [the TSA] 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 [the TSA] 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) (citation omitted). You state the information at issue was made by the board in connection with an investigation to prevent or detect a violation of the TSA or board rule or order. Based on your representations and our review of the information at issue, we agree this information consists of internal notes, memoranda, reports, or communications made in connection with an investigation. Therefore, the board must withhold the information in Exhibits E1-E9, G1-G3, and G10 under section 552.101 of the Government Code in conjunction with article 581-28(A) of the TSA.⁵

You claim the remaining information is confidential under section 552.101 of the Government Code in conjunction with article 581-28(B) of the TSA, which provides as follows:

B. Confidentiality of Certain Registration-Related and Other Materials. To the extent not already provided for by [the TSA], any intraagency or interagency notes, memoranda, reports, or other communications consisting of advice, analyses, opinions, or recommendations 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. The Commissioner may, at the Commissioner's discretion, disclose any confidential information in the Commissioner's possession to any governmental or regulatory authority or association of governmental or regulatory authorities approved by Board rule or to any receiver appointed under Section 25-1 of [the TSA]. The disclosure does not violate any other provision of [the TSA] or [the Act].

V.T.C.S. art. 581-28(B). Upon review, we agree the information at issue consists of advice, analyses, opinions, or recommendations that are confidential under article 581-28(B).

⁵As our ruling is dispositive, we do not address your remaining arguments against disclosure of this information.

Accordingly, the board must withhold the remaining information under section 552.101 of the Government Code in conjunction with article 581-28(B) of the TSA.⁶

In summary, the board must withhold the information in Exhibits D1-D13, G4-G9, G11, and G12 under section 552.101 of the Government Code in conjunction with article 581-28(A) of the TSA in accordance with the previous determination issued in Open Records Letter No. 2004-0239. The board must continue to rely on Open Records Letter No. 2014-16001 as a previous determination and withhold the information in Exhibits E10-E15 in accordance with that ruling. The board must withhold the information in Exhibits E1-E9, G1-G3, and G10 under section 552.101 of the Government Code in conjunction with article 581-28(A) of the TSA. The board must withhold the remaining information under section 552.101 of the Government Code in conjunction with article 581-28(B) of the TSA.

Finally, you ask this office to issue a previous determination that would permit the board to withhold records made in connection with an investigation to prevent or detect a violation of the TSA or a board rule or order under section 552.101 of the Government Code in conjunction with section 28 of the TSA, without the necessity of requesting a decision from this office. 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/ds

⁶As our ruling is dispositive, we do not address your remaining arguments against disclosure of this information.

Ref: ID# 535973

Enc. Submitted documents

c: Requestor
(w/o enclosures)