



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 24, 2014

Ms. Marlene K. Sparkman  
General Counsel  
Texas State Securities Board  
P.O. Box 13167  
Austin, Texas 78711-3167

OR2014-21408

Dear Ms. Sparkman:

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# 542514.

The Texas State Securities Board (the "board") received a request for nine categories of information.<sup>1</sup> You state the board made some of the requested information available to the requestor. 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.<sup>2</sup>

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<sup>1</sup>You state the board sought and received clarification of the request for information. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if a large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

<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 that those records contain substantially different types of information than that submitted to this office.

Initially, you state, except for the information you have marked, Exhibit E16 is not responsive to the instant request. This ruling does not address the public availability of non-responsive information, and the board is not required to release non-responsive information in response to this request.

Next, we note the responsive information may have been the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2014-16001 (2014) and 2014-16067 (2014). We have no indication there has been any change in the law, facts, or circumstances on which the previous rulings were based. Accordingly, to the extent the responsive information is identical to the information previously requested and ruled upon by this office, we conclude the board must rely on Open Records Letter Nos. 2014-16001 and 2014-16067 as previous determinations and withhold or release the identical information in accordance with those rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and 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). To the extent the responsive information was not previously ruled on, we will address your submitted arguments.

Next, you claim the information in Exhibits D1-D15, G4-G9, G11, and G12 is subject to the previous determination we granted to the board in 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 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-D15, 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.<sup>3</sup> *See* ORD 673 at 7-8 (listing elements of second type of previous determination under Gov't Code § 552.301(a)).

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

You assert the responsive information in Exhibits E1-E17, 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 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 responsive information in Exhibits E1-E17, G1-G3, and G10 under section 552.101 of the Government Code in conjunction with article 581-28(A) of the TSA.<sup>4</sup>

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,

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<sup>4</sup>As our ruling is dispositive, we do not address your remaining arguments against disclosure of this information.

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). 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.<sup>5</sup>

In summary, to the extent the responsive information is identical to the information previously requested and ruled upon by this office, we conclude the board must rely on Open Records Letter Nos. 2014-16001 and 2014-16067 as previous determinations and withhold or release the identical information in accordance with those rulings. The board must withhold the information in Exhibits D1-D15, 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. The board must withhold the information in Exhibits E1-E17, 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 request that this office issue a "previous determination" that would permit the board in the future to withhold from disclosure internal notes, memoranda, reports, or communications made by the board in connection with an investigation to prevent or detect a violation of the TSA, 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 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/>

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

[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,

A handwritten signature in black ink that reads "Britni Fabian". The signature is written in a cursive, flowing style.

Britni Fabian  
Assistant Attorney General  
Open Records Division

BF/bhf

Ref: ID# 542514

Enc. Submitted documents

c: Requestor  
(w/o enclosures)