



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 9, 2015

Ms. Laurie Hobbs  
Assistant General Counsel  
Texas Office of Consumer Credit Commissioner  
2601 North Lamar Boulevard  
Austin, Texas 78705

OR2015-06823

Dear Ms. Hobbs:

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# 559491 (OCCC Open Records File #: OR-15-113).

The Office of Consumer Credit Commissioner (the "commissioner's office") received a request for reports of examination, work papers, and internal communications pertaining to a specified entity and internal communications and work papers pertaining to a specified issue, excluding any information pertaining to other licensees.<sup>1</sup> You claim the requested information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.111, and 552.112 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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<sup>1</sup>We note the commissioner's office asked for and received clarification regarding this request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

Initially, you state portions of the submitted information are not responsive to the request because they pertain to other licensees or do not pertain to the specified entity or specified issue. The commissioner's office need not release nonresponsive information in response to this request, and this ruling will not address that information.

Next, we must address the requestor's assertion the commissioner's office failed to comply with section 552.301(e-1) of the Government Code in requesting this decision. Section 552.301(e-1) requires a governmental body that submits written comments requesting a ruling to the attorney general under subsection 552.301(e)(1)(A), to send a copy of those comments to the person who requested the information from the governmental body not later than the fifteenth business day after the date of receiving the written request. Gov't Code § 552.301(e-1). Section 552.301(e-1) authorizes the governmental body to redact information from those written comments that discloses or contains the substance of the information requested. *Id.* We note the commissioner's office redacted virtually the entirety of its arguments in support of sections 552.103, 552.107, 552.111, and 552.112 in the copy of the comments sent to the requestor. We further note portions of the commissioner's office's comments at issue neither disclose nor contain the substance of the submitted information. We, therefore, conclude the commissioner's office failed to comply with section 552.301(e-1) in requesting a decision with respect to its arguments under sections 552.103, 552.107, 552.111, and 552.112 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to provide the requestor with information required in section 552.301 results in the legal presumption the requested information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See* Gov't Code § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (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). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing the information is made confidential by another source of law or affects third party interests. *See* Open Records Decision No. 630 (1994). Sections 552.103, 552.107, 552.111, and 552.112 are discretionary exceptions that protect a governmental body's interests and may be waived. *See Birnbaum v. Alliance of Am. Insurers*, 994 S.W.2d 766, 776 (Tex. App.—Austin 1999, pet. denied) (section 552.112 is a discretionary exception that may be waived), abrogated on other grounds by *In re Bass*, 113 S. W.3d 735 (Tex. 2003); *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision Nos. 677 at 10 (attorney work-product privilege under section 552.111 or rule 192.5 is not compelling reason to withhold information under section 552.302), 676 at 12 (claim of attorney-client privilege under section 552.107 or rule 503 does not provide compelling reason to withhold information under section 552.302 if it does not implicate third-party rights), 522 (1989) (discretionary exceptions in general), 470 at 7 (1987) (deliberative process privilege

under statutory predecessor to section 552.111 subject to waiver). As such, sections 552.103, 552.107, 552.111, and 552.112 do not constitute compelling reasons to withhold information for purposes of section 552.302, and the commissioner's office may not withhold the responsive information under those exceptions.

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 section 14.2015 of the Finance Code, which provides:

(a) Except as provided by Subsection (b), information or material obtained or compiled by the commissioner in relation to an examination or investigation by the commissioner or the commissioner's representative of a license holder, registrant, applicant, or other person under Section 339.001, Subtitle B or C, Title 4, Subchapter G of Chapter 393, or Chapter 394 is confidential and may not be disclosed by the commissioner or an officer or employee of the [commissioner's office], including:

(1) information obtained from a license holder, registrant, applicant, or other person examined or investigated under Section 339.001, Subtitle B or C, Title 4, Subchapter G of Chapter 393, or Chapter 394;

(2) work performed by the commissioner or the commissioner's representative on information obtained from a license holder, registrant, applicant, or other person for the purposes of an examination or investigation conducted under Section 339.001, Subtitle B or C, Title 4, Chapter 393 with respect to a credit access business, or Chapter 394;

(3) a report on an examination or investigation of a license holder, registrant, applicant, or other person conducted under Section 339.001, Subtitle B or C, Title 4, Chapter 393 with respect to a credit access business, or Chapter 394; and

(4) any written communications between the license holder, registrant, applicant, or other person, as applicable, and the commissioner or the commissioner's representative relating to or referencing an examination or investigation conducted under Section 339.001, Subtitle B or C, Title 4, Chapter 393 with respect to a credit access business, or Chapter 394.

(b) The commissioner or the commissioner's representative may disclose the confidential information or material described by Subsection (a):

(1) to a department, agency, or instrumentality of this state or the United States if the commissioner considers disclosure to be necessary or proper to the enforcement of the laws of this state or the United States and in the best interest of the public;

(2) if the license holder, registrant, applicant, or other person consents to the release of the information or has published the information contained in the release; or

(3) if the commissioner determines that release of the information is required for an administrative hearing.

Fin. Code § 14.2015. Section 14.201 of the Finance Code authorizes the commissioner's office to conduct investigations of certain consumer credit providers under, among other statutes, subtitle B of title 4 of the Finance Code, which encompasses chapter 345 of the Finance Code pertaining to retail installment sales. *See id.* § 14.201. You explain the commissioner's office is conducting an investigation of the requestor's client's business for possible registration violations and for the unauthorized charging of fees under chapter 345 of the Finance Code. *See id.* §§ 345.351 (registration of holder), 14.202(b). Pursuant to section 14.2015(a), all information or material obtained or compiled by the commissioner's office in connection with an examination or investigation conducted under this authority is confidential. *Id.* § 14.2015(a). The commissioner's office may disclose information made confidential by section 14.2015(a) only in certain limited circumstances, including when a "license holder, registrant, applicant, or other person consents to the release of the information." *Id.* § 14.2015(b)(2). You explain Exhibit E was obtained during the investigation conducted by the commissioner's office under chapter 345. Thus, based on your representations and our review, we conclude Exhibit E is made confidential by section 14.2015(a). However, we note the requestor's client is the subject of the investigation, and you state the client has provided consent for the release of the information to the requestor. Thus, we find the requestor has a right of access to Exhibit E under section 14.2015(b) of the Finance Code. Accordingly, the commissioner's office may not withhold Exhibit E from this requestor under section 552.101 of the Government Code in conjunction with section 14.2015(a) of the Finance Code. As you raise no further exceptions to disclosure, the responsive information must be released.<sup>2</sup>

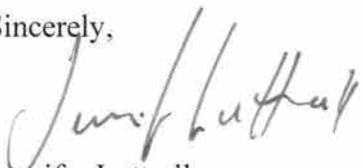
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<sup>2</sup>Because the requestor has a right of access to certain information that otherwise would be excepted from release under the Act, the commissioner's office must again seek a decision from this office if it receives a request for this information from a different requestor.

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](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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/akg

Ref: ID# 559491

Enc. Submitted documents

c: Requestor  
(w/o enclosures)