



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 2, 2015

Mr. F.C. "Chris" Schneider
Associate General Counsel
Public Information Officer
Texas Department of Savings and Mortgage Lending
2601 North Lamar Boulevard, Suite 201
Austin, Texas 78705

OR2015-20718

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# 581591.

The Texas Department of Savings and Mortgage Lending (the "department") received a request for all information obtained during a specified investigation and the final investigation report.¹ 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 note the requestor only seeks information obtained during the specified investigation and the final investigation report. Thus, only information obtained during the specified investigation and the final investigation report are responsive to the request. This ruling does not address the public availability of any information that is not responsive to the request, and the department is not required to release this information in response to this request.

¹We understand the department sought and received clarification of the request for information. *See* Gov't Code § 552.222(b) (stating governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

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 section 157.021 of the Finance Code, which reads, in relevant part, as follows:

(a) The [savings and mortgage lending] commissioner may conduct an inspection of a person licensed as a residential mortgage loan originator as the commissioner determines necessary to determine whether the person is complying with this chapter, Chapter 180 [of the Finance Code], and applicable rules. An inspection under this subsection may include inspection of the books, records, documents, operations, and facilities of the person. The commissioner may request the assistance and cooperation of the sponsoring mortgage banker in providing needed documents and records. The commissioner may not make a request of the sponsoring mortgage banker for documents and records unrelated to the person being investigated or inspected. 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 as a residential mortgage loan originator if the complaint, or the complaint and documentary or other evidence presented in connection with the complaint, provides a reasonable cause. Before commencing an investigation, the commissioner must notify the licensed residential mortgage loan originator in writing of the complaint and that the commissioner intends to investigate the matter.

(c) For reasonable cause, the commissioner at any time may investigate a person licensed as a residential mortgage loan originator to determine whether the person is complying with this chapter, Chapter 180 [of the Finance Code], and applicable rules.

...

(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.

Fin. Code § 157.021(a)-(c), (f). The department claims the submitted information consists of investigative file information. The department argues the documents accumulated during the investigation at issue in Exhibit 2 and the final investigation report in Exhibit 3 are confidential under section 157.021(f). The department does 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 the portions of the final report revealing this same information, which we have marked, are confidential under section 157.021(f). Accordingly, the department must withhold the responsive information in Exhibit 2 in its entirety and the information we have marked in Exhibit 3 under section 552.101 of the Government Code in conjunction with section 157.021(f) of the Finance Code. However, the remaining portions of the final investigation report do not constitute information "obtained by the commissioner during an inspection or an investigation[.]" *Id.* § 157.021(f). Thus, the department may not withhold the remaining responsive information under section 552.101 in conjunction with section 157.021(f). As no other exceptions to disclosure have been raised, the remaining responsive information must be released.

Finally, the department requests a previous determination under section 552.101 in conjunction with section 157.021 of the Finance Code. However, we decline to issue one 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.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,



Cole Hutchison
Assistant Attorney General
Open Records Division

CH/som

Ref: ID# 581591

Enc. Submitted documents

c: Requestor
(w/o enclosures)