KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 11, 2016

Ms. Kristen Worman
Deputy General Counsel
Texas Real Estate Commission
P.O. Box 12188
Austin, Texas 78711-2188

OR2016-08070

Dear Ms. Worman:

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# 605072 (TREC ID# 20160128.1).

The Texas Real Estate Commission (the "commission") received a request for all information contained in the commission's file pertaining to a named individual. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.111, and 552.137 of the Government Code and privileged under Texas Rule of Civil Procedure 192.5. We have considered your arguments and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public 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 made confidential by other statutes, including section 1101.2051 of the Occupations Code, which provides the following:

> (a) Information or material, including an investigation file, is confidential and not subject to disclosure under [the Act], or any other means of legal compulsion for release, including disclosure, discovery, or subpoena, if the information or material is prepared or compiled by the commission in connection with a complaint, investigation, or audit of any person subject to the jurisdiction of the commission.

> (b) Notwithstanding Subsection (a), information or material prepared or compiled by the commission in connection with a complaint, investigation, or audit may be disclosed:
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> > (1) to the respondent of the complaint;
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> > (2) to a person that is the subject of an audit;
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> > (3) to a person providing a service to the commission, an expert or other witness, or an investigator, if the information is necessary for preparation for, or a presentation in, a disciplinary proceeding against an applicant or license holder, or a subsequent trial or appeal taken from a disciplinary proceeding;
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> > (4) to an entity in another jurisdiction that licenses, registers, credentials, or disciplines any person subject to the jurisdiction of the commission;
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> > (5) to a law enforcement agency;
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> > (6) to the State Office of Administrative Hearings; or
> >
> > (7) to the commission, or a panel of the commission, for use during any proceeding conducted by the State Office of Administrative Hearings or in a subsequent trial or appeal of a commission action or order.
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> . . .
>
> (e) Notwithstanding Subsection (a), on the dismissal or final resolution of a complaint, investigation, or audit, information or materials prepared or compiled by the commission in connection with the complaint, investigation, or audit, including a competed audit report or a final order of the commission, is subject to disclosure under Chapter 321 [of the Government Code or the Act].

Occ. Code § 1101.2051(a)-(b), (e). You explain the submitted information consists of the commission's entire investigation file for the specified complaint. You inform us the submitted information was prepared or compiled by the commission in conjunction with the investigation of the complaint. The submitted information reveals the person under investigation is a broker and is subject to the jurisdiction of the commission. *See id.* § 1101.002(1) (defining "broker" for purposes of chapter 1101 of the Occupations Code); *see also id.* § 1101.151(a)(1) (requiring the commission to administer chapters 1101 and 1102). Thus, we determine the submitted information is subject to section 1101.2051.

You inform us the commission's investigation in this matter remains ongoing, and the commission has not dismissed the complaint at issue or entered a final order in this matter; thus, the submitted information does not fall under section 1101.2051(e). Further, we find the requestor is not entitled to receive this information under section 1101.2051(b). Accordingly, we conclude the commission must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 1101.2051(a) of the Occupations Code.[1]

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,

Abigail T. Adams
Assistant Attorney General
Open Records Division

ATA/akg

Ref: ID# 605072

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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[1]As our ruling is dispositive, we need not address your remaining arguments against disclosure of the submitted information.