



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

December 1, 2017

Ms. Cora Peck  
Public Information Officer  
Texas Department of Savings & Mortgage Lending  
2601 North Lamar, Suite 201  
Austin, Texas 78705

OR2017-27392

Dear Ms. Peck:

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# 686042.

The Texas Department of Savings and Mortgage Lending (the "department") received a request for information pertaining to a specified investigation. The department states it will release some information. The department claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the department claims and reviewed the submitted information.

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. This section encompasses information protected by other statutes, such as section 156.301 of the Finance Code. Chapter 156 of the Finance Code is also known as the Mortgage Broker License Act. *See* Fin. Code § 156.001. Section 156.301 provides in part:

(a) The [savings and loan] commissioner may conduct inspections of a person licensed under this chapter or a residential mortgage loan originator who is licensed under Chapter 157 and sponsored by and conducting business for a licensed or registered mortgage loan company under this chapter as the commissioner determines necessary to determine whether the person or the residential mortgage loan originator is complying with this chapter and applicable rules. The inspections may include inspection of the books, records, documents, operations, and facilities of the person or the residential

mortgage loan originator and access to any documents required under rules adopted under this chapter. 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 under this chapter or a residential mortgage loan originator who is licensed under Chapter 157 and sponsored by and conducting business for a licensed or registered residential mortgage loan company under this chapter if the complaint, or the complaint and documentary or other evidence presented in connection with the complaint, provides reasonable cause. The commissioner, before commencing an investigation, shall notify the residential mortgage loan company or the 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 under this chapter or a residential mortgage loan originator who is licensed under Chapter 157 and sponsored by and conducting business for a licensed or registered residential mortgage loan company under this chapter to determine whether the person or the residential mortgage loan originator is complying with this chapter 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.

*Id.* § 156.301(a)-(c), (f). The department claims that the request encompasses information obtained in an investigation conducted by the department. The department states it will release all orders and the original complaint, including its accompanying documentation, but argues that the documents accumulated during the investigation and the final investigation report are confidential under section 156.301(f). Upon review, we agree that most of the information obtained by the department during its investigations and the final report which reveal this same information are confidential under section 156.301. However, we conclude portions of the final investigation report and certain communications sent by the department, which we marked for release, do not constitute information “obtained by the commissioner during an inspection or an investigation[.]” *Id.* § 156.301(f). Accordingly, this information may not be withheld under section 156.301(f) of the Finance Code. Thus, with the exception of the information we marked for release, the department must withhold the submitted information under section 156.301(f) of the Finance Code in conjunction with section 552.101 of the Government Code.

We note the remaining information contains e-mail addresses that are subject to section 552.137 of the Government Code.<sup>1</sup> Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov’t Code § 552.137(a)-(c). The e-mail addresses at issue are not a type specifically excluded by section 552.137(c) of the Government Code. Accordingly, the department must withhold the e-mail addresses we marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their disclosure.

In summary, with the exception of the information we marked for release, the department must withhold the submitted information under section 156.301(f) of the Finance Code in conjunction with section 552.101 of the Government Code. In releasing the information we marked, the department must withhold the personal e-mail addresses we marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their disclosure.

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,



Kaelan A. Henze  
Assistant Attorney General  
Open Records Division

KAH/gw

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Ref: ID# 686042

Enc. Submitted documents

c: Requestor  
(w/o enclosures)