



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 23, 2019

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

OR2019-36422

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# 803070.

The Texas Department of Savings and Mortgage Lending (the "department") received a request for information pertaining to a specified investigation. You state you will release some information to the requestor. You claim some of 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.

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 mortgage lending] commissioner may conduct inspections of a person licensed under this chapter or a residential mortgage loan originator who is licensed under Chapter 157 [of the Finance Code] 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). You claim the request encompasses information obtained in an investigation conducted by the department. You state the department will release the complaint and its accompanying documentation, but argue the information obtained during the investigation and the final investigation report are confidential under section 156.301(f). Upon review, we agree the information obtained by the department during its investigation and the portions of the final report that reveal this same information are confidential under section 156.301. However, we conclude the remaining portions of the final investigation report, certain communications sent by the department, and the Agreed Order, 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, and the complaint and its accompanying documentation, which you state you will release, the department must withhold the

submitted information under section 552.101 of the Government Code in conjunction with section 156.301(f) of the Finance Code.¹

Section 552.101 of the Government Code also 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, 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.

¹ As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Id. § 157.021(a)-(c), (f). Upon review, we find none of the remaining information at issue is confidential under section 157.021(f). Accordingly, the department may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 157.021(f) of the Finance Code.

The remaining information includes personal e-mail addresses subject to section 552.137 of the Government Code.² Section 552.137 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). *See* Gov’t Code § 552.137(a)-(c). The e-mail addresses at issue are not excluded by subsection (c). Therefore, the department must withhold the personal e-mail addresses we marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

In summary, with the exception of the information we marked for release, and the complaint and its accompanying documentation, which you state you will release, the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 156.301(f) of the Finance Code. In releasing the remaining information, 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 public disclosure.³

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.

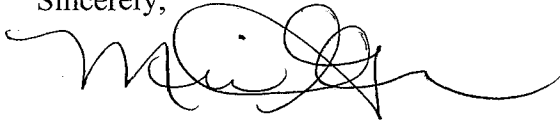
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable

² 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).

³ We note the information being released contains e-mail addresses to which the requestor has a right of access under section 552.137(b) of the Government Code. *See* Gov’t Code § 552.137(b). However, Records Decision No. 684 (2009) is a previous determination authorizing all governmental bodies to withhold specific categories of information without the necessity of requesting an attorney general decision, including e-mail addresses of members of the public under section 552.137 of the Government Code. Thus, if the department receives another request for this same information from a person who does not have a right of access to it, Open Records Decision No. 684 authorizes the department to redact the requestor’s e-mail address and his client’s e-mail address without the necessity of requesting an attorney general decision.

charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Michelle Garza", with a stylized flourish extending to the right.

Michelle Garza
Assistant Attorney General
Open Records Division

MG/mo

Ref: ID# 803070

Enc. Submitted documents

c: Requestor
(w/o enclosures)