



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 25, 2020

Mr. Iain A. Berry
Associate General Counsel
Department of Savings & Mortgage Lending
2601 North Lamar Boulevard, Suite 201
Austin, Texas 78705

OR2020-09272

Dear Mr. Berry:

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# 818196 (OR-20-035).

The Department of Savings and Mortgage Lending (the "department") received a request for eleven categories of information pertaining to a specified investigation involving a named individual. You state you have released some information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, you state release of the submitted information may implicate the interests of the named individual, whom you notified.¹ See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). 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." *Id.* § 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

¹ As of the date of this letter, we have not received comments from the named individual.

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). You state the submitted information consists of investigative file information. You do 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 at issue is confidential under section 157.021(f). Accordingly, the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 157.021(f) of the Finance Code.²

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

² As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted information.

Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable 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,

D. Michelle Case
Assistant Attorney General
Open Records Division

DMC/jxd

Ref: ID# 818196

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)