



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 15, 2020

Ms. Audrey Spalding
Assistant General Counsel
Office of Consumer Credit Commissioner
2601 North Lamar Boulevard
Austin, Texas 78705

OR2020-13765

Dear Ms. Spalding:

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# 828292 (PIR# 20-089).

The Office of Consumer Credit Commissioner (the "commissioner's office") received a request for a specified case file. You state the commissioner's office has released some information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code. We have considered the exceptions 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. Section 552.101 encompasses section 14.2015 of the Finance Code, which provides:

(a) Except as provided by Subsection (b), information or material obtained or compiled by the commissioner in relation to an examination or investigation by the commissioner or the commissioner's representative of a license holder, registrant, applicant, or other person under Subtitle B or C, Title 4, Subchapter G of Chapter 393,1 or Chapter 394 of this code or Subchapter B, Chapter 1956, Occupations Code, is confidential and may not be disclosed by the commissioner or an officer or employee of the office, including:

(1) information obtained from a license holder, registrant, applicant, or other person examined or investigated under Subtitle B or C, Title 4, Subchapter G of Chapter 393, or Chapter 394 of this code or Subchapter B, Chapter 1956, Occupations Code;

(2) work performed by the commissioner or the commissioner's representative on information obtained from a license holder, registrant, applicant, or other person for the purposes of an examination or investigation conducted under Subtitle B or C, Title 4, Chapter 393 with respect to a credit access business, or Chapter 394 of this code or Subchapter B, Chapter 1956, Occupations Code;

(3) a report on an examination or investigation of a license holder, registrant, applicant, or other person conducted under Subtitle B or C, Title 4, Chapter 393 with respect to a credit access business, or Chapter 394 of this code or Subchapter B, Chapter 1956, Occupations Code; and

(4) any written communications between the license holder, registrant, applicant, or other person, as applicable, and the commissioner or the commissioner's representative relating to or referencing an examination or investigation conducted under Subtitle B or C, Title 4, Chapter 393 with respect to a credit access business, or Chapter 394 of this code or Subchapter B, Chapter 1956, Occupations Code.

(b) The commissioner or the commissioner's representative may disclose the confidential information or material described by Subsection (a):

(1) to a department, agency, or instrumentality of this state or the United States if the commissioner considers disclosure to be necessary or proper to the enforcement of the laws of this state or the United States and in the best interest of the public;

(2) if the information was previously provided to or provided by the license holder, registrant, applicant, or other person, and the person consents to the release of the information or has published the information contained in the release;

(3) if the commissioner determines that release of the information is required for an administrative hearing; or

(4) to provide a summary of investigation information to the person who filed the complaint with the office.

Fin. Code § 14.2015. Section 14.201 of the Finance Code authorizes the commissioner's office to conduct investigations of certain consumer credit providers under, among other

statutes, subtitle B of title 4 of the Finance Code, which encompasses chapter 348 of the Finance Code pertaining to motor vehicle installment sales. *See id.* § 14.201. You explain the commissioner's office conducted an investigation under chapter 348 of the Finance Code. *See id.* §§ 348.008(b) (applicability of other statutes to retail installment transactions), 14.202(b). Pursuant to section 14.2015(a), all information or material obtained or compiled by the commissioner's office in connection with an examination or investigation conducted under this authority is confidential. *Id.* § 14.2015(a). The commissioner's office may disclose information made confidential by section 14.2015(a) only in certain limited circumstances. *Id.* § 14.2015(b). You explain the information you marked was obtained during the investigation conducted by the commissioner's office under chapter 348. The disclosure provisions of subsection (b) are not applicable. *See id.* Thus, based on your representations and our review, we conclude the information you marked is made confidential by section 14.2015(a). Accordingly, the commissioner's office must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 14.2015(a) of the Finance Code.

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. *See* Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made "to facilitate the rendition of professional legal services" to the client governmental body. TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *In re Tex. Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in capacity other than that of attorney). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. Thus, the mere fact that a communication involves an attorney for the government does not demonstrate this element. Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. TEX. R. EVID. 503(b)(1). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a confidential communication, *id.*, meaning it was "not intended to be disclosed to third persons other than those: (A) to whom disclosure is made to further the rendition of professional legal services to the client; or (B) reasonably necessary to transmit the communication." *Id.* 503(a)(5). Whether a communication meets this definition depends on the *intent* of the parties involved at the time the information was communicated. *See Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, orig. proceeding). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You state the remaining information consists of a communication between an attorney for the commissioner's office and commissioner's office employees that was made for the purpose of providing legal services to the commissioner's office. We understand this communication was intended be confidential and has remained confidential. Based upon your representations and our review, we find you have established the applicability of the attorney-client privilege to the information at issue. Accordingly, the commissioner's office may withhold the remaining information under section 552.107(1) of the Government Code.

In summary, the commissioner's office must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 14.2015(a) of the Finance Code. The commissioner's office may withhold the remaining information under section 552.107(1) of the Government Code.

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 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,

Matthew Taylor
Assistant Attorney General
Open Records Division

MT/mo

Ref: ID# 828292

Enc. Submitted documents

c: Requestor
(w/o enclosures)