



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 24, 2020

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

OR2020-24107

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# 845699.

The Texas Department of Savings and Mortgage Lending (the "department") received a request for six categories of information, including information pertaining to a specified investigation. You state you have released 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, 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.<sup>1</sup>

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.

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<sup>1</sup> 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.

In summary, with the exception of the information we marked for release, which must be released, 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.

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,

Michelle Garza  
Assistant Attorney General  
Open Records Division

MG/rm

Ref: ID# 845699

Enc. Submitted documents

c: Requestor  
(w/o enclosures)