



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 16, 2010

Ms. Susan Denmon Banowsky
Vinson & Elkins
For Texas Windstorm Insurance Association
2801 Via Fortuna, Suite 100
Austin, Texas 78746-7568

OR2010-02282

Dear Ms. Banowsky:

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# 370269.

The Texas Windstorm Insurance Association (the "association"), which you represent, received a request for a copy of the entire claims file evidencing the extent and amount of damage to a specified property. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note a portion of the submitted information, which we have marked, is not responsive to the instant request for information because it does not pertain to the specified property. This ruling does not address the public availability of any information that is not responsive to the request and the association is not required to release that information in response to the request.

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. You assert the submitted information is excepted from public disclosure under section 552.101 in conjunction with the Gramm-Leach-Bliley Act (the "GLB Act"). See 15 U.S.C. § 6801 *et seq.* The Federal Financial Modernization Act, also known as the GLB Act, became law in November 1999. The purpose of the GLB Act is to promote

competition in the financial services industry. *See* H.R. Conf. Rep. No. 106-434, at 245 (1999), *reprinted in* 1999 U.S.C.C.A.N. 245, 245. Reflecting Congressional concern regarding the dissemination of consumers' personal financial information, the GLB Act provides certain privacy protections "to protect the security and confidentiality of [consumers'] nonpublic personal information." 15 U.S.C. § 6801(a). The statute defines nonpublic personal information ("NPI") as "personally identifiable financial information ["PIFI"] - (i) provided by a consumer to a financial institution; (ii) resulting from any transaction with the consumer or any service performed for the consumer; or (iii) otherwise obtained by the financial institution." *Id.* § 6809(4)(A). Federal Regulations define PIFI as

any information: (i) [a] consumer provides to [a regulated financial institution] to obtain a financial product or service . . . ; (ii) [a]bout a consumer resulting from any transaction involving a financial product or service between [a regulated financial institution] and a consumer; or (iii) [a regulated financial institution] otherwise obtain[s] about a consumer in connection with providing a financial product or service to that consumer.

16 C.F.R. § 313.3(o)(1). Sections 6802(a) and (b) of title 15 of the United States Code provide in pertinent part as follows:

(a) Notice requirements

Except as otherwise provided in this subchapter, a financial institution may not, directly or through any affiliate, disclose to a nonaffiliated third party any nonpublic personal information, unless such financial institution provides or has provided to the consumer a notice that complies with section 6803 of this title.

(b) Opt out

(1) In general

A financial institution may not disclose nonpublic personal information to a nonaffiliated third party unless--

(A) such financial institution clearly and conspicuously discloses to the consumer, in writing or in electronic form or other form permitted by the regulations prescribed under section 6804. of this title, that such information may be disclosed to such third party;

(B) the consumer is given the opportunity, before the time that such information is initially disclosed, to direct that such information not be disclosed to such third party; and

(C) the consumer is given an explanation of how the consumer can exercise that nondisclosure option.

15 U.S.C. § 6802(a), (b). “Nonaffiliated third party” is defined as “any entity that is not an affiliate of, or related by common ownership or affiliated by corporate control with, the financial institution, but does not include a joint employee of such institution.” *Id.* § 6809(5). Additionally, section 22.14 of title 28 of the Texas Administrative Code provides as follows:

(a) Conditions for disclosure. Except as otherwise authorized in this subchapter, a covered entity may not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party unless:

(1) the covered entity has provided to the consumer an initial notice as required under § 22.8 of this title (relating to Initial Privacy Notice);

(2) the covered entity has provided to the consumer an opt out notice as required in § 22.11 of this title (relating to Form of Opt Out Notice to Consumers and Opt Out Methods);

(3) the covered entity has given the consumer a reasonable opportunity, before it discloses the information to the nonaffiliated third party, to opt out of the disclosure; and

(4) the consumer does not opt out.

28 T.A.C. § 22.14(a). Section 6809(3)(A) of title 15 of the United States Code defines financial institution as “any institution the business of which is engaging in financial activities as described in section 1843(k) of Title 12.” 15 U.S.C. § 6809(3)(A). Section 1843(k)(4)(b) of title 12 defines the following activity as financial in nature: “Insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death, or providing and issuing annuities, and acting as principal, agent, or broker for purposes of the foregoing, in any State.” 12 U.S.C. § 1843(k)(4)(B). You explain the association is a pool of all property and casualty insurance companies authorized to write coverage in Texas, and its purpose is to provide Texas citizens in certain areas access to adequate wind and hail coverage when it is not available in the insurance marketplace, and to pay insureds’ claims when losses occur. We agree the association is a financial institution

for purposes of the GLB Act. We understand the association is regulated by the Texas Department of Insurance. We also understand the requestor is a nonaffiliated third party. *See* 15 U.S.C. § 6809(5).

You seek to withhold the submitted information under the GLB Act and chapter 22 of title 28 of the Texas Administrative Code. You state the submitted information was provided to the association by consumers for the purpose of obtaining insurance, and is also information about consumers resulting from transactions with insureds by a regulated financial institution. However, the GLB Act and chapter 22 of title 28 of the Texas Administrative Code define a consumer as an individual who obtains insurance or financial products or services from a financial institution which are to be used primarily for personal, family, or household purposes. 15 U.S.C. § 6809(9); 28 T.A.C. § 22.2(8); *see also* 16 C.F.R. § 313.3(e)(1). Further, in *Individual Reference Services Group, Inc. v. Federal Trade Commission*, 145 F. Supp.2d 6, 30 (D.D.C. 2001), the court ruled PIFI includes only information about individuals who obtain financial services primarily for family, personal, or household purposes, therefore excluding all information provided by individuals for business purposes. 145 F. Supp.2d at 30; *see also* 16 C.F.R. § 313.1(b). The responsive information pertains to a policy used for business purposes. Thus, the responsive information does not pertain to a consumer for purposes of the GLB Act or chapter 22 of title 28 of the Texas Administrative Code. Because the information at issue was provided to the association for business purposes by an insured who is not a consumer, this information does not fall under the definition of PIFI. Accordingly, we find the information at issue does not constitute confidential NPI for purposes of the GLB Act or chapter 22 of title 28 of the Texas Administrative Code. Thus, we find the information at issue may not be withheld under section 552.101 of the Government Code in conjunction with the GLB Act or chapter 22 of title 28 of the Texas Administrative Code.

You also raise section 552.101 in conjunction with the common-law right of privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *See id.* at 681-82. The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See id.* at 683. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). We note common-law privacy protects the interests of individuals, not those of corporate and other business entities. *See* Open Records Decision Nos. 620 (1993) (corporation has no right to privacy), 192 (1978) (right to privacy is designed primarily to protect human feelings and sensibilities, rather than property, business, or other pecuniary

interests); *see also United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950) (cited in *Rosen v. Matthews Constr. Co.*, 777 S.W.2d 434 (Tex. App.—Houston [14th Dist.] 1989), *rev'd on other grounds*, 796 S.W.2d 692 (Tex. 1990)) (corporation has no right to privacy). Upon review, we find the responsive information pertains to a business entity and not to an individual. Thus, you have failed to establish any of the responsive information is highly intimate or embarrassing information pertaining to an individual. Accordingly, the association may not withhold any of the information at issue under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.136 of the Government Code states, “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See id.* § 552.136(a) (defining “access device”). Accordingly, the association must withhold the routing, bank account, credit card, and insurance policy numbers we have marked under section 552.136 of the Government Code.

We note a portion of the remaining information is subject to section 552.137 of the Government Code.¹ 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). We have marked e-mail addresses that are not of the type specifically excluded by section 552.137(c). Therefore, the association must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their release.

In summary, the association must withhold the routing, bank account, credit card, and insurance policy numbers we have marked under section 552.136. The association must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their release. The remaining information must be released.²

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

²We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including routing, bank account, credit card, and insurance policy numbers under section 552.136 of the Government Code and e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/jb

Ref: ID# 370269

Enc. Submitted documents

c: Requestor
(w/o enclosures)