



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 26, 2014

Ms. June B. Harden
Assistant Attorney General
Assistant Public Information Coordinator
General Counsel Division
Office of the Attorney General
P.O. Box 12548
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OR2014-10992

Dear Ms. Harden:

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# 527274 (OAG PIR No. 14-38638).

The Office of the Attorney General (the "OAG") received a request for all documents produced by the defendants in discovery, all documents obtained from third parties in discovery, and all deposition transcripts for a specified lawsuit. You state the OAG will release some of the requested information. You claim some of the submitted information is excepted from disclosure under section 552.107(2) of the Government Code. You state, although the OAG takes no position with respect to the remaining submitted information, its release may implicate the interests of third parties. Accordingly, you state, and provide documentation demonstrating, the OAG notified Citicorp Data System, Inc. ("Citicorp"); Intertek; and SolTech, Inc. of the request for information and of their right to submit arguments stating why their information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have received comments from a representative of Citicorp. We have considered the submitted

arguments and reviewed the submitted information, some of which you state constitutes a representative sample.¹

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) of the Government Code to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, this office has received comments from only Citicorp explaining why its information should not be released to the requestor. Thus, we have no basis to conclude the release of any portion of the submitted information would implicate the interests of the remaining third parties, and none of the submitted information may be withheld on that basis. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3.

Section 552.107(2) of the Government Code provides information is excepted from disclosure if "a court by order has prohibited disclosure of the information." Gov't Code § 552.107(2). You argue a court has prohibited disclosure of the information in Exhibit B. You have submitted the Agreed Protective Order, which provides certain information "designated as 'Confidential' by any of the supplying or receiving parties" that is "produced or exchanged in the course of [the] litigation shall be used solely for the purpose of preparation and trial of [the] litigation and for no other purpose whatsoever[.]" *State v. 1 Soltech Inc.*, No. D-1-GV-13-001055 (261st Dist. Ct., Travis Co., Tex. filed Sept. 17, 2013) (agreed protective order). The order applies to the OAG and remains in effect. You explain the information in Exhibit B was produced by or obtained from the defendants in discovery and the information at issue reflects it was designated as confidential. Thus, we conclude the OAG must withhold Exhibit B pursuant to section 552.107(2).

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. Citicorp asserts its 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. §§ 6801-6809. The Federal Financial Modernization Act, also known as the GLB Act, became law in November 1999, the purpose of which is to promote

¹This letter ruling assumes the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent the other information is substantially different than that submitted to this office. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

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). Additional protection is provided to consumers by limitations placed on the reuse of PIFI obtained from a financial institution by a nonaffiliated third party. Section 6802(c) provides as follows:

. . . a nonaffiliated third party that receives from a financial institution [NPI] under this section shall not, directly or through an affiliate of such receiving third party, disclose such information to any other person that is a nonaffiliated third party of both the financial institution and such receiving third party, unless such disclosure would be lawful if made directly to such other person by the financial institution.

15 U.S.C. § 6802(c). Citicorp, which constitutes a financial institution for purposes of the GLB Act, explains its submitted information is confidential NPI about the company's individual consumers. *See id.* § 6809(3)(A) (defining "financial institution"). However, upon our review, we note the information at issue pertains to a commercial account. The GLB Act defines a consumer as "an individual who obtains, from a financial institution, financial products or services which are to be used primarily for personal, family, or household purposes[.]" 15 U.S.C. § 6809(9); *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). Thus, the commercial account holders are not consumers for purposes of the GLB Act and, accordingly, this information does not fall under the definition of PIFI. As such, we find Citicorp's

commercial account holder information does not constitute confidential NPI for purposes of the GLB Act. Consequently, this information may not be withheld under section 552.101 of the Government Code in conjunction with the GLB Act.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. *See generally* Open Records Decision Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Whether the public's interest in obtaining personal financial information is sufficient to justify its disclosure must be determined on a case-by-case basis. *See* ORD 373. Upon review, we find the submitted information contains information that satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, we conclude the OAG must withhold this information, which we have marked and indicated, under section 552.101 in conjunction with common-law privacy.

We note portions of the remaining information are subject to sections 552.136 and 552.137 of the Government Code.² Section 552.136 states, "Notwithstanding 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); *see also id.* § 552.136(a) (defining "access device"). Accordingly, the OAG must withhold the bank account numbers, bank routing numbers, debit card number, and credit card numbers, expiration dates, and security numbers within the submitted information under section 552.136.

Section 552.137 of the Government Code 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). *Id.* § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, an Internet website

²The 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).

address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, or an e-mail address maintained by a governmental entity for one of its officials or employees. *Id.* § 552.137(c). To the extent the submitted e-mail addresses are not subject to section 552.137(c), the OAG must withhold the e-mail addresses within the submitted information under section 552.137 unless the owners of the addresses affirmatively consent to their release.

We note some of the remaining information appears to be subject to copyright law. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the OAG must withhold Exhibit B pursuant to section 552.107(2) of the Government Code. The OAG must withhold the information we have marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy. The OAG must withhold the bank account numbers, bank routing numbers, debit card number, and credit card numbers, expiration dates, and security numbers within the submitted information under section 552.136 of the Government Code. To the extent the e-mail addresses are not subject to section 552.137(c) of the Government Code, the OAG must withhold the e-mail addresses within the submitted information under section 552.137 of the Government Code unless the owners of the addresses affirmatively consent to their release. The OAG must release the remaining information; however, any information protected by copyright may only be released in accordance with copyright law.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 http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

³We note the remaining information contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



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Assistant Attorney General
Open Records Division

LEH/akg

Ref: ID# 527274

Enc. Submitted documents

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