



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 15, 2017

Ms. Jessica Crass
Legal and Compliance Manager
Texas FAIR Plan Association
P.O. Box 99080
Austin, Texas 78709-9080

OR2017-03366

Dear Ms. Crass:

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# 645790 (TWIA ID# 000496).

The Texas FAIR Plan Association (the "association") received a request for a specified investigation file pertaining to a named individual. You claim portions of the submitted information are 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.

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 portions of the submitted information are 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 601.002 of the Insurance Code requires the Texas Department of Insurance (the “department”) to comply with the GLB Act. Ins. Code § 601.002. Section 601.051 of the Insurance Code requires the department to promulgate rules necessary to carry out compliance with the GLB Act which are consistent with federal law. *Id.* § 601.051. 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 nonprofit organization that is authorized to issue residential property insurance to qualified Texas citizens in underserved areas of the state, distributing the losses and expenses in writing that insurance. We agree the association is a financial institution for purposes of the GLB Act. You state the association is regulated by the Texas Department of Insurance. You further state the requestor is a non-affiliated third party. See 15 U.S.C. § 6809(5).

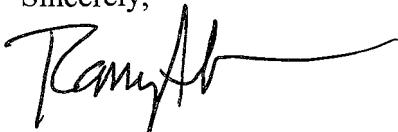
You state the submitted information consists of an individual policyholder’s insurance file, and includes the address, telephone number, loan information, liability limits, coverage

amounts, premium information, claim information, and claim amounts, as well as other financial information, such as valuations, depreciation, and deductible payments. You seek to withhold a portion of the submitted information under the GLB Act and chapter 22 of title 28 of the Texas Administrative Code. You state the above categories of information were provided to the association for the purpose of obtaining insurance and are also information resulting from transactions with the insured or services performed for insured by the association, a regulated financial institution. *See* 15 U.S.C. § 6809(4)(A); 16 C.F.R. § 313.3(o)(1). You state the association has not provided opt out notice to the insured and no policyholder has otherwise consented to release of the requested information. Because the information at issue was provided to the association by the insured in order to obtain a service, this information falls under the definition of PIFI. *See generally Individual Reference Servs. Group, Inc. v. Fed. Trade Comm'n*, 145 F. Supp.2d 6, 26-31 (D.D.C. 2001) (discussing language, structure, and history of GLB Act to determine whether certain information meets definition of PIFI). Based on your representations and our review, we generally determine the association is prohibited by section 6802(a) and (b) of title 15 of the United States Code and section 22.14(a) of title 28 of the Texas Administrative Code from releasing the insured's PIFI. We note, however, the requestor in this instance identifies the insured whose records are at issue. Therefore, only redacting the insured's PIFI from the information at issue would not protect the insured's identity. Accordingly, in order to effectuate the intent of the GLB Act in this instance, the association must withhold the entirety of the submitted information under section 552.101 of the Government Code in conjunction with the GLB Act.

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

Sincerely,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/bw

Ref: ID# 645790

Enc. Submitted documents

c: Requestor
(w/o enclosures)