



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 5, 2018

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

OR2018-04935

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# 696964.

The Texas FAIR Plan Association (the "association") received a request for information pertaining to an inspection at a specified address. You claim 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. 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") and relevant state insurance regulations. *See* 15 U.S.C. §§ 6801 *et seq.*; Ins. Code §§ 601.002 (covered entity must comply with 15 U.S.C. §§ 6802-03), .051 (commissioner of insurance shall adopt rules necessary to carry out and keep privacy requirements consistent with GLB Act); 28 T.A.C. §§ 22.1-22.26. 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 from [that regulated financial institution];
- (ii) About 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). Section 6802 of title 15 of the United States Code provides, 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 [NPI], 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 [NPI] 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.

...

(e) General exceptions

Subsections (a) and (b) of this section shall not prohibit the disclosure of [NPI]

...

(2) with the consent or at the direction of the consumer[.]

15 U.S.C. § 6802(a), (b), (e)(2). “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). 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.” *Id.* § 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).

Additionally, section 601.002 of the Insurance Code requires covered entities to comply with the GLB Act. Ins. Code §§ 601.002, .001(3) (defining “covered entity”). Section 601.051 of the Insurance Code requires the Department of Insurance to promulgate rules necessary to carry out compliance with the GLB Act which are consistent with federal law. *Id.* § 601.051. Subchapter A of chapter 22 of the Texas Administrative Code was promulgated pursuant to section 601.051. *See* 28 T.A.C. § 22.1 (stating subchapter A governs the treatment of nonpublic personal financial information about individuals by covered entities). “Nonpublic personal financial information” includes:

(i) personally identifiable financial information;

(ii) any list, description, or other grouping of consumers (and publicly available information pertaining to them) derived using any personally identifiable financial information not publicly available;
and

(iii) any list of individuals' names and street addresses derived in whole or in part using personally identifiable financial information not publicly available, such as account numbers[.]

Id. § 22.2(21)(A). 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.

Id. § 22.14(a). For purposes of section 22.14, a “nonaffiliated third party” is “[a]n entity that is not an affiliate of, related to by common ownership, or affiliated by corporate control with the covered entity. The term does not include a joint employee of the entity.” *Id.* § 22.2(20).

You explain the association was established by the enactment of chapter 2211 of the Texas Insurance Code for the purpose of providing basic residential property insurance to applicants who cannot secure coverage in the voluntary market. *See* Ins. Code § 2211.051. Based on your representation and our review, we agree the association is a financial institution for purposes of the GLB Act. You state the requestor is a non-affiliated third party. *See* 15 U.S.C. § 6809(5); 28 T.A.C. § 22.2(20).

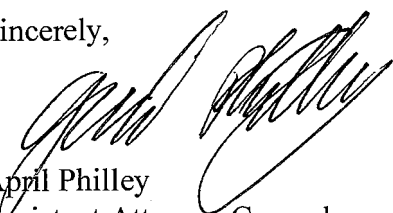
However, in this instance, we note the requestor is the authorized representative of the consumers to whom the information at issue pertains, and is not a non-affiliated third party. *See* 15 U.S.C. § 6809(9) (defining a consumer for purposes of the GLB Act as “an individual who obtains, from a financial institution, financial products or services which are to be used primarily for personal, family, or household purposes[.]”); *see also* 16 C.F.R. § 313.3(e)(1). Therefore, sections 6802(a) and 6802(b) of title 15 of the United States Code do not make

the information at issue confidential with respect to this requestor. Consequently, the association is not prohibited from releasing the information at issue to this requestor pursuant to 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. *See* 15 U.S.C. § 6802(a), (b); 28 T.A.C. § 22.14(a); *see also* Ins. Code § 601.002(a) (providing a covered entity shall comply with 15 U.S.C. § 6802). Accordingly, the association may not withhold the information at issue from this requestor under section 552.101 of the Government Code in conjunction with the GLB Act. As you raise no further arguments against disclosure, the association must release the submitted information.

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,



April Philley
Assistant Attorney General
Open Records Division

AP/som

Ref: ID# 696964

c: Requestor