



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 4, 2020

Ms. Cindy Watkins  
Compliance Manager  
Texas Windstorm Insurance Association  
P.O. Box 99090  
Austin, Texas 78709-9090

OR2020-27728

Dear Ms. Watkins:

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# 851521 (Ref. No. 000688).

The Texas Windstorm Insurance Association ("TWIA") received a request for the names, mailing addresses, e-mail addresses, and telephone numbers of recipients of certain types of notice letters during a stated period of time. You inform us TWIA will redact e-mail addresses subject to section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).<sup>1</sup> You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>2</sup> We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>3</sup>

Initially, we note some of the submitted information is not responsive to the present request for information because it does not consist of the types of names, mailing addresses, e-mail

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<sup>1</sup> Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general opinion.

<sup>2</sup> Although you also raise section 552.024 of the Government Code, we note this section is not an exception to disclosure. *See* Gov't Code § 552.024. Additionally, although you also raise sections 552.104, 552.105, 552.106, 552.107, 552.111, and 552.136 of the Government Code, you make no arguments to support these exceptions. Therefore, we assume you have withdrawn your claim that these exceptions apply to the submitted information. *See id.* §§ 552.301, .302.

<sup>3</sup> We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

addresses, or telephone numbers specified in the present request. This ruling does not address the public availability of any information that is not responsive to the request and TWIA is not required to release such information in response to the present 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. This section encompasses information protected by other statutes. TWIA asserts the information at issue 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. §§ 6801-6809; Ins. Code §§ 601.002 (covered entity must comply with 15 U.S.C. §§ 6802-6803), .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 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); *see id.* § 6809(4)(C)(I) (PIFI includes “any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived using any [NPI]”). 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)(1). “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).

Similarly, subchapter A of chapter 22 of the Texas Administrative Code governs the treatment of nonpublic personal information about individuals by covered entities. 28 T.A.C. § 22.1(a); *see id.* § 22.1(b) (providing scope of subchapter A of chapter 22). A covered entity is defined as “[a]n individual or entity that receives an authorization from the Texas Department of Insurance[,]” including an individual or entity to which chapter 82 of the Insurance Code is applicable. *Id.* § 22.2(11) (defining “covered entity”); *see also* Ins. Code § 82.002 (listing types of companies to which chapter 82 of Insurance Code applies). For purposes of subchapter A, “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 that is 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[.]

28 T.A.C. § 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.” *Id.* § 22.2(20).

TWIA is an association composed of all property insurers authorized to engage in the business of property insurance in Texas, other than insurers prevented by law from writing on a statewide basis coverages available through TWIA. Ins. Code § 2210.051(a); *see id.* §§ 2210.006, .051(b) (to engage in business of insurance in Texas, property insurer must be member of TWIA); *see also* 28 T.A.C. § 5.4001(c)(2)(D). The primary purpose of TWIA is to provide an adequate market for windstorm and hail insurance in Texas seacoast territories. Ins. Code § 2210.001. In addition, you state TWIA is an insurance company. *See id.* §§ 2210.053(a)(1), .203(a); *see also Tex. Windstorm Ins. Ass’n v. Poole*, 255 S.W.3d 775, 777 (Tex. App.—Amarillo 2008, pet. denied) (TWIA has “attributes of a private insurance business while operating under a governmental cloak”). Based on these representations, we agree TWIA is a financial institution for purposes of the GLB Act and a covered entity for purposes of section 22.14. You state the requestor is a non-affiliated third party. *See* 15 U.S.C. § 6809(5); 28 T.A.C. § 22.2(20).

You seek to withhold the information at issue under the GLB Act and chapter 22 of title 28 of the Texas Administrative Code. You state this information was provided to TWIA for the purpose of obtaining insurance and is also information resulting from transactions with the insured or services performed for the insured by TWIA, a regulated financial institution. *See* 15 U.S.C. § 6809(4)(A); 16 C.F.R. § 313.3(o)(1). You state TWIA has not provided opt out notices to the insured. Based upon your representations and our review, we agree

this information falls under the definition of PIFI. *See generally Individual Reference Servs. Group, Inc. v. Federal 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). We also agree this information consists of nonpublic personal financial information for purposes of section 22.14. Based on your representations and our review, we determine TWIA 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 information at issue. Accordingly, TWIA must withhold the submitted responsive information under section 552.101 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 <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,

Blake Brennan  
Assistant Attorney General  
Open Records Division

BBX/gw

Ref: ID# 851521

c: Requestor