KEN PAXTON
ATTORNEY GENERAL OF TEXAS

This ruling has been modified by court action.
The ruling and judgment can be viewed in PDF
format below.

ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 28, 2011

Mr. Robert Giddings
Assistant General Counsel
Texas Department of Banking
2601 North Lamar Boulevard
Austin, Texas 78705-4294

The ruling you have requested has been amended as a result of litigation and has been attached to this document.

OR2011-17444

Dear Mr. Giddings:

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# 436996.

The Texas Department of Banking (the "department") received two requests for three categories of information: (1) "[r]ecords indicating the daily schedules" of persons holding the titles of nine specified department offices during a specified time period; (2) "[r]ecords indicating any and all travel or other expenses" for persons holding the nine specified department offices and who "sought reimbursement from the State of Minnesota" during a specified time period; and (3) "[r]ecords indicating the names, titles, job descriptions, start dates, termination dates and salaries" of persons holding the nine specified department offices during a specified time period. You state you do not possess any responsive information for category two of the request.[1] You state you have released the information requested in the third category of the request. You claim that some of the submitted information is not subject to the Act. You also claim that some of the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.107, 552.110, 552.112,

[1]The Act does not require a governmental body to release information that did not exist when it received a request or to create responsive information. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

552.136, and 552.146 of the Government Code.[2] We have considered your arguments and reviewed the submitted representative samples of information.[3]

Initially, we address your claim that some of the calendar entries you have marked are not subject to the Act. The Act is applicable only to "public information." *See* Gov't Code §§ 552.002, .021. Section 552.002(a) provides that "public information" consists of the following:

> [I]nformation that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:
>
> (1) by a governmental body; or
>
> (2) for a governmental body and the governmental body owns the information or has a right of access to it.

Id. § 552.002(a). Thus, virtually all of the information in a governmental body's physical possession constitutes public information and, thus, is subject to the Act. *Id.* § 552.002(a)(1); *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). You claim the calendar entries at issue are not subject to the Act. You state these entries pertain to doctor's appointments or family activities and are not collected, assembled, or maintained in connection with the transaction of official business. Based on your representations and our review of the submitted information, we conclude that the calendar entries at issue do not constitute public information for the purposes of section 552.002. *See* Open Records Decision No. 635 at 4 (1995) (section 552.002 not applicable to personal information unrelated to official business and created or maintained by state employee involving *de minimis* use of state resources). Therefore, the calendar entries you have marked are not subject to the Act, and the department need not release them in response to this 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. Section 552.101 encompasses information made confidential by other

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[2]Although you also raise sections 552.111, 552.116, 552.137, and 552.147 of the Government Code, you have not marked any of the documents under these exceptions, nor have you presented arguments explaining how these exceptions apply to the submitted information, as required by section 552.301. Thus, you have waived your claims under sections 552.111 and 552.116, and we have no basis for finding any of the information at issue confidential under section 552.137 of the Government Code. *See* Gov't Code §§ 552.301(e)(1)(A), .302 (governmental body must provide comments stating why exceptions raised should apply to information requested).

[3]This letter ruling assumes that the submitted representative samples of information are 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 that 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).

statutes, such as section 31.301 of the Finance Code. Section 31.301 provides in relevant part:

> (a) Except as expressly provided otherwise by this subtitle, Chapter 11 or 12, or a rule adopted under this subtitle, the following are confidential and may not be disclosed by the banking commissioner or an employee of the department:
>
> > (1) information directly or indirectly obtained by the department in any manner, including an application or examination, concerning the financial condition or business affairs of a financial institution or a present, former, or prospective shareholder, officer, director, affiliate, or service provider of a financial institution, other than information in a published statement or in the public portion of a call report or profit and loss statement; and
> >
> > (2) all related files and records of the department.

Fin. Code § 31.301(a). The information at issue consists of calendar entries noting appointments of department officials with representatives of various entities. You assert that a "majority of bracketed entries" in the information at issue "identify a specific bank, trust company or financial institution that is the subject of regulatory concern." However, we find the information at issue does not identify, and you provide no further explanation, which entities are the subject of regulatory concern. Furthermore, you do not explain, and the information does not indicate, which of the entities are "financial institutions" as defined by the Finance Code for purposes of section 31.301. *See id.* § 31.002(a)(25). As such, you have failed to demonstrate how the information you have marked is information that concerns the financial condition or business affairs of a financial institution for the purposes of section 31.301. *See id.* § 31.301(a). Accordingly, none of the information at issue may be withheld under section 552.101 of the Government Code on this basis.

Section 552.101 of the Government Code also encompasses section 35.012 of the Finance Code, which governs the confidentiality of records pertaining to certain enforcement orders issued to banks and provides, in pertinent part:

> A copy of a notice, correspondence, transcript, pleading, or other document in the records of the department relating to an order issued under [Subchapter A] is confidential and may be released only as provided by Subchapter D, Chapter 31 [of the Finance Code], except that the banking commissioner periodically shall publish all final removal and prohibition orders. The banking commissioner may release a final cease and desist order, a final order imposing an administrative penalty, or information regarding the existence of any of those orders to the public if the banking commissioner concludes that the release would enhance effective enforcement of the order.

Act of May 17, 2011, 82nd Leg., R.S., S.B. 1165, § 8 (to be codified at Fin. Code § 35.012) (footnote omitted). Upon review, we find you do not explain, and the submitted information does not otherwise demonstrate, how any of the information at issue relates to an order issued under subchapter A, chapter 35 of the Finance Code. As such, we conclude the department may not withhold any of the information at issue under section 552.101 of the Government Code in conjunction with section 35.012 of the Finance Code.

Section 552.101 of the Government Code also encompasses section 35.105 of the Finance Code, which governs the confidentiality of records pertaining to certain supervision and conservatorship orders issued to banks and provides:

> An order issued under [Subchapter B] and a copy of a notice, correspondence, transcript, pleading, or other document in the records of the department relating to the order are confidential and may be released only as provided by Subchapter D, Chapter 31 [of the Finance Code], except that the banking commissioner may release to the public an order or information regarding the existence of an order if the banking commissioner concludes that the release would enhance effective enforcement of the order.

Fin. Code § 35.105 (footnote omitted). Upon review, we find you do not explain, and the submitted information does not otherwise demonstrate, how any of the information you have marked relates to an order issued under subchapter B, chapter 35 of the Finance Code. As such, we conclude the department may not withhold any of the information at issue under section 552.101 of the Government Code in conjunction with section 35.105 of the Finance Code.

Section 552.101 of the Government Code also encompasses chapter 151 of the Finance Code, which pertains to the regulation of money services business. Section 151.606(a) provides, in part:

> Except as otherwise provided by Subsection (b) or rule of the [Finance Commission of Texas], all financial information and all other personal information obtained by the [banking] commissioner under this chapter through application, examination, investigation, or otherwise, and any related file or record of the department, is confidential and not subject to disclosure.

Id. § 151.606(a). Upon review, we find you do not explain, and the submitted information does not otherwise demonstrate, how any of the information you have marked constitutes financial or personal information pertaining to a money services business for purposes of section 151.606 of the Finance Code. As such, we conclude the department may not withhold any of the information at issue under section 552.101 of the Government Code in conjunction with section 151.606 of the Finance Code.

Section 552.101 of the Government Code also encompasses chapter 154 of the Finance Code, which governs prepaid funeral services. Section 154.055 provides:

> (a) Information relating to the financial condition of a seller [of prepaid funeral services] obtained by the department directly or indirectly, through examination or otherwise, other than published statements, is confidential.
>
> (b) The files and records of the department relating to the financial condition of a seller are confidential.
>
> (c) The [banking] commissioner may disclose the information described by Subsection (a) or (b) to an agency, department, or instrumentality of this or another state or the United States if the commissioner considers disclosure to be in the best interest of the public and necessary or proper to enforce the laws of this or another state or the United States.

Id. § 154.055. Upon review, we find you do not explain, and the submitted information does not otherwise demonstrate, how any of the information you have marked constitutes information relating to the financial condition of a seller of prepaid funeral services for the purposes of section 154.055 of the Finance Code. As such, we conclude the department may not withhold any of the information at issue under section 552.101 of the Government Code in conjunction with section 154.055 of the Finance Code.

Section 552.101 of the Government Code also encompasses chapter 181 of the Finance Code, which governs trust companies. Section 181.301 provides, in relevant part:

> (a) Except as expressly provided otherwise by this subtitle or a rule adopted under Section 181.003(a)(1), the following are confidential and may not be disclosed by the banking commissioner or an employee of the department:
>
> > (1) information directly or indirectly obtained by the department in any manner, including through an application or examination, concerning the financial condition or business affairs of a state trust company . . . other than the public portions of a report of condition or income statement; and
> >
> > (2) each related file or record of the department.

Id. § 181.301(a). Upon review, we find you do not explain, and the submitted information does not otherwise demonstrate, how any of the information you have marked concerns the financial condition or business affairs of a trust company for purposes of section 181.301 of the Finance Code. As such, we conclude the department may not withhold any of the information at issue under section 552.101 of the Government Code in conjunction with section 181.301 of the Finance Code.

Section 552.101 also encompasses section 201.007 of the Finance Code, which governs the confidentiality of information pertaining to bank holding companies and interstate bank operations and provides:

> Except as expressly provided otherwise in [Subtitle G of Title 3 of the Finance Code], confidentiality of information obtained by the [banking] commissioner under [Subtitle G] is governed by Subchapter D, Chapter 31 [of the Finance Code], or, with respect to a state savings bank, Subtitle C [of Title 3 of the Finance Code], and may not be disclosed by the commissioner or an employee of the commissioner's department except as provided by Subchapter D, Chapter 31, or, with respect to a state savings bank, Subtitle C.

Id. § 201.007. Upon review, we find you do not explain, and the submitted information does not otherwise demonstrate, how any of the information you have marked was obtained under subtitle G of title 3 of the Finance Code, or pertains to a state savings bank and was obtained under subtitle C of title 3 of the Finance Code. As such, we conclude the department may not withhold any of the information at issue under section 552.101 of the Government Code in conjunction with section 201.007 of the Finance Code.

We note you also raise sections 185.012, 185.105, and 187.304 of the Finance Code. However, you do not explain how or why these provisions would apply to any of the information at issue, nor do you mark any information you wish to withhold on those bases. Therefore, this ruling does not address those provisions.

Section 552.101 of the Government Code also encompasses the constitutional right to privacy. Constitutional privacy protects two kinds of interests. *See Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987). The first is the interest in independence in making certain important decisions relating to the "zones of privacy" pertaining to marriage, procreation, contraception, family relationships, and child rearing and education the United States Supreme Court has recognized. *See Fadjo v. Coon*, 633 F.2d 1172 (5th Cir. 1981); ORD 455 at 3-7. The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. *See Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985); ORD 455 at 6-7. This aspect of constitutional privacy balances the individual's privacy interest against the public's interest in the information. *See* ORD 455 at 7. Constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs" and the scope of information protected is narrower than that under the common-law doctrine of privacy. *Id.* at 5 (quoting *Ramie*, 765 F.2d at 492). You contend some of the information you have marked is protected under constitutional privacy. However, you have not demonstrated, and we do not find, that any of the information at issue falls within the zones of privacy or otherwise implicates an individual's privacy interests for purposes of constitutional privacy. We therefore conclude the department may not withhold any of the information at issue under section 552.101 of the Government Code in conjunction with constitutional privacy.

You raise section 552.102 of the Government Code. Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). The Texas Supreme Court recently held section 552.102(a) excepts from disclosure the dates of birth of state

employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010). To the extent the information at issue contains the dates of birth of individuals employed by the department, the department must withhold this information under section 552.102(a) of the Government Code. The remaining information is not excepted under section 552.102(a) and may not be withheld on that basis.

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. Gov't Code § 552.107(1). When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate that the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made "for the purpose of facilitating the rendition of professional legal services" to the client governmental body. TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *In re Tex. Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in a capacity other than that of attorney). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. Thus, the mere fact that a communication involves an attorney for the government does not demonstrate this element. Third, the privilege applies to only communications between or among clients, client representatives, lawyers, and lawyer representatives. TEX. R. EVID. 503(b)(1). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies to only a confidential communication, *id.*, meaning it was "not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication." *Id.* 503(a)(5). Whether a communication meets this definition depends on the intent of the parties involved at the time the information was communicated. *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, orig. proceeding). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain that the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You contend the calendar entries relating to the settlement or review of an appeal of an administrative regulatory proceeding are subject to section 552.107(1). However, you provide no explanation as to how the information you have marked constitutes or documents confidential communications among or between the department, its lawyers, or its lawyer representatives made for the purpose of facilitating the rendition of legal services to the

department. As such, the department may not withhold any of the information at issue under section 552.107(1) of the Government Code.

You raise section 552.110 of the Government Code for some of the information at issue. We note that section 552.110 is designed to protect the interests of third parties, not those of governmental bodies. Thus, we do not address your claim under section 552.110 of the Government Code.

Section 552.112 of the Government Code excepts from public disclosure "information contained in or relating to examination, operating, or condition reports prepared by or for an agency responsible for the regulation or supervision of financial institutions or securities, or both." Gov't Code § 552.112. The information at issue consists of calendar entries noting appointments of department officials with representatives of various entities. You do not explain how this information "relat[es] to examination, operating, or condition reports" prepared by the department. Therefore, the department may not withhold any of the information at issue under section 552.112 of the Government Code.

You mark teleconferencing passcodes in the information at issue; thus, we understand you to raise section 552.136 of the Government Code for this information. 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." *Id.* § 552.136(b). You provide no explanation as to how the passcodes you have marked constitute access device numbers used to obtain money, goods, services, or any item of value or to initiate the transfer of funds. *See id.* § 552.136(a) (defining "access device"). As such, the department may not withhold any of the information you have marked under section 552.136 of the Government Code.

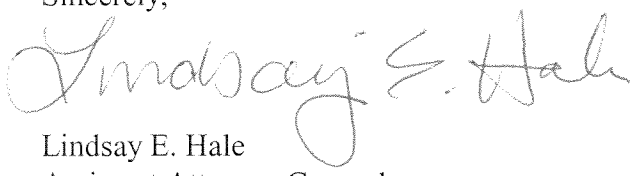
You also raise section 552.146 of the Government Code, which excepts from disclosure "[a]ll written or otherwise recorded communications, including conversations, correspondence, and electronic communications, between a member of the legislature or the lieutenant governor and an assistant or employee of the Legsislative Budget Board [("LBB").]" *Id.* § 552.146(a). Section 552.146(b) further excepts from disclosure "[m]emoranda of a communication between a member of the legislature or the lieutenant governor and an assistant or employee of the [LBB.]" *Id.* § 552.146(b). You provide no explanations as to how any of the information you have marked constitutes a communication or memoranda of a communication for the purposes of section 552.146. As such, the department may not withhold any of the information at issue under section 552.146 of the Government Code.

In summary, the department need not release the information you have marked that is not subject to the Act in response to the request for information. To the extent the information at issue contains the dates of birth of individuals employed by the department, the department must withhold this information under section 552.102(a) of the Government Code. The department must release the remaining 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.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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/em

Ref: ID# 436996

Enc. Submitted documents

c: Requestors
(w/o enclosures)

CAUSE NO. D-1-GV-11-001906

TEXAS DEPARTMENT OF BANKING *Plaintiff,*	§ §	IN THE DISTRICT COURT
v.	§ §	53rd JUDICIAL DISTRICT
GREG ABBOTT, ATTORNEY GENERAL OF TEXAS *Defendant.*	§ § §	TRAVIS COUNTY, TEXAS

Filed in The District Court of Travis County, Texas
DEC - 2 2014
At 4:25 P.M.
Amalia Rodriguez-Mendoza, Clerk

AGREED FINAL JUDGMENT

This is an open records lawsuit brought under the Public Information Act (PIA), Tex. Gov't Code ch. 552, in which Plaintiff Texas Department of Banking (the Department) challenged Attorney General Open Records Letter Ruling OR2011-17444 (2011). All matters in controversy between the Department and Defendant, Greg Abbott, Attorney General of Texas (the Attorney General) having been resolved, the parties agree to the entry and filing of an agreed final judgment.

Texas Government Code section 552.325(d) requires the Court to allow the requestor of information a reasonable period of time to intervene after receiving notice of a proposed settlement in a PIA case. The Attorney General represents to the Court that, in compliance with Tex. Gov't Code § 552.325(c), the Attorney General sent notice by certified letter to requestor Mr. Russell Carollo on 11/14/14, providing reasonable notice of this setting (see attached certified mail receipt). The requestor was informed of the parties' agreement that the Department must withhold portions of the information at issue in this suit, as agreed upon between the parties. The requestor was also informed of his right to intervene in the suit to contest the withholding of the information. The requestor has neither informed the parties of his intention to intervene, nor has a plea in intervention been filed.

ENTERED
JK

After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties in this suit.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED THAT:

1. The Department and the Attorney General have agreed that, in accordance with the PIA and under the facts presented, those portions of the information at issue identifying "financial institutions" as defined by Texas Finance Code § 31.002(a)(25), as well as information identifying individuals associated with such financial institutions, are excepted from disclosure pursuant to Texas Government Code § 552.101 in conjunction with Texas Finance Code §§ 31.301, 181.301, 201.007, & 204.102 (hereinafter, the Excepted Information);

2. The Department must withhold the Excepted Information described in Paragraph 1 of this order;

3. Conference call passcodes found within the remaining information at issue are not "public information" as defined by Texas Government Code § 552.002 and need not be released by the Department;

4. Apart from the Excepted Information described in Paragraph 1 of this order and the conference call passcodes described in Paragraph 3 of this order, the Department must release all remaining responsive information to the requestor;

5. All court cost and attorney fees are taxed against the parties incurring the same;

6. All relief not expressly granted is denied; and

7. This Agreed Final Judgment finally disposes of all claims between the Department and the Attorney General, in this cause and is a final judgment.

D-1-GV-11-001906

SIGNED this 2nd day of December, 2014.

JUDGE PRESIDING

AGREED:

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ATTORNEY FOR DEFENDANT GREG
ABBOTT, ATTORNEY GENERAL OF
TEXAS

CAUSE NO. D-1-GV-11-001906

TEXAS DEPARTMENT OF BANKING *Plaintiff,*	§ § §	IN THE DISTRICT COURT
v.	§ §	53rd JUDICIAL DISTRICT
GREG ABBOTT, ATTORNEY GENERAL OF TEXAS *Defendant.*	§ § §	TRAVIS COUNTY, TEXAS

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is made by and between Plaintiff Texas Department of Banking (the Department) and Defendant Greg Abbott, Attorney General of Texas (the Attorney General). This Agreement is made on the terms set forth below.

BACKGROUND

The Department received a request under the Public Information Act (the PIA) for, in relevant part, the schedules and calendars of Department employees holding certain specified titles, over a period of years (the requested information). The Department requested an open records ruling from the Attorney General pursuant to the PIA, Tex. Gov't Code § 552.301, asserting portions of the requested information identified financial institutions that were the subject of regulatory concern and were excepted from disclosure pursuant to numerous provisions of the Finance Code, as well as sections 552.101, 552.107, 552.110, and 552.112 of the PIA. The Attorney General issued Open Records Letter Ruling OR2011-17444 (2011) in response to the Department's request. The ruling concluded, in relevant part, that the Department had failed to demonstrate how the provisions of the Finance Code or the asserted provisions of the PIA applied to the requested information.

The Department disputed the ruling and filed a lawsuit, styled Cause No. D-1-GV-11-001906, *Texas Department of Banking v. Greg Abbott, Attorney General of Texas*, in the 53rd Judicial District Court of Travis County, Texas (this lawsuit), to preserve its rights under the PIA. The Department provided notice of this lawsuit to requestor Mr. Russell Carollo, through his representative Ms. Thea Skinner, as required by Tex. Gov't Code § 552.325(b). Tex. Gov't Code § 552.325(c) allows the parties to enter into a settlement under which the information at issue in this lawsuit may be withheld. The parties wish to resolve this matter without further litigation.

TERMS

For good and sufficient consideration, the receipt of which is acknowledged, the parties to this Agreement agree and stipulate that:

1. Portions of the requested information consist of calendar entries containing conference call passcodes. Such conference call passcodes are not "public information" as defined by Texas Government Code § 552.002.

2. Portions of the requested public information consist of:

   a. Calendar entries memorializing bank and trust exams concerning the financial condition and business affairs of regulated institutions subject to Texas Finance Code §§ 31.301, 181.301, 201.007, & 204.102;

   b. Calendar entries memorializing meetings with regulated entities subject to Texas Finance Code §§ 31.301, 181.301, 201.007, & 204.102;

   c. Calendar entries containing ratings of regulated entities subject to Texas Finance Code §§ 31.301, 181.301, 201.007, & 204.102;

   d. Calendar entries memorializing enforcement actions subject to Texas Finance Code §§ 35.012, 35.105, 185.012, 185.105; and

   e. Calendar entries memorializing pre-conversion meetings of financial institutions subject to Texas Finance Code §§ 31.301, 181.301, 201.007, & 204.102.

3. The calendar entries identified in Paragraph 2 of this Agreement contain information identifying "financial institutions," as defined by Texas Finance Code § 31.002(a)(25), and information identifying individuals associated with such financial institutions (collectively, the Excepted Information). The Excepted Information is confidential pursuant to Texas Government Code § 552.101 in conjunction with Texas Finance Code §§ 31.301, 181.301, 201.007, & 204.102.

4. The Department must withhold from the requestor the Excepted Information, as described in Paragraph 3 of this agreement.

5. The Department must release all remaining public information to the requestor.

6. The Department and the Attorney General agree to the entry of an agreed final judgment, the form of which has been approved by each party's attorney. The agreed final judgment will be presented to the Court for approval, on the uncontested docket, with at least 21 days' prior notice to the requestor.

7. In accordance with Texas Government Code§ 552.325(c), the Attorney General agrees to notify requestor Russell Carollo of the proposed settlement and of his right to intervene in this lawsuit should he contest either the determination that the conference call passcodes are not public information, as described in Paragraph 1 of this Agreement, or the withholding of the Excepted Information, as described in Paragraph 3 of this Agreement.

8. Should the requestor intervene in this lawsuit, a final judgment entered in this lawsuit will prevail over this Agreement, to the extent of any conflict.

9. Each party to this Agreement will bear its own costs, including attorneys' fees relating to this litigation.

7. The terms of this Agreement are contractual and not mere recitals, and the agreements contained herein and the mutual consideration transferred is to compromise disputed claims fully, and nothing in this Agreement shall be construed as an admission of fault or liability, all fault and liability being expressly denied by all parties to this Agreement.

10. The Department warrants that its undersigned representative is duly authorized to execute this Agreement on its behalf and that its representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims the parties have against each other arising out of the matters described in this Agreement.

11. The Attorney General warrants that his undersigned representative is duly authorized to execute this Agreement on behalf of the Attorney General and his representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims the parties have against each other arising out of the matters described in this Agreement.

12. This Agreement shall become effective, and be deemed to have been executed, on the date upon which the last of the undersigned parties signs this Agreement.

TEXAS DEPARTMENT OF BANKING

By: _____

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Date: 10/31/14

GREG ABBOTT
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By: _____

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Date: 11/4/14