



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 22, 2011

Mr. Stanton Strickland  
Acting Associate Commissioner  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714-9104

OR2011-18887

Dear Mr. Strickland:

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# 439948 (TDI OR # 120801).

The Texas Department of Insurance (the "department") received a request for a specified complaint. Although the department takes no position on whether the submitted information is excepted from disclosure, you state the release of this information may implicate the proprietary interests of Texas Windstorm Insurance Association ("TWIA"). Accordingly, you state, and provide documentation showing, that you notified TWIA of the department's receipt of the request for information and of its right to submit arguments to this office as to why its information should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from TWIA.<sup>1</sup> We have reviewed the submitted information and arguments.

Initially, we the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

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<sup>1</sup>We note that we only rule on the information submitted by the department for our review. *See* Gov't Code § 552.301(e)(1)(D). Therefore, we do not address the additional information submitted by TWIA.

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]”

Gov’t Code § 552.022(a)(1). TWIA provides documentation that the submitted information pertains to a completed investigation performed by the department. Accordingly, the submitted information consists of a completed investigation subject to subsection 552.022(a)(1). The department must release the completed investigation pursuant to subsection 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or is expressly made confidential under the Act or other law. *See id.* TWIA seeks to withhold the completed investigation subject to subsection 552.022(a)(1) under sections 552.101 and 552.111 of the Government Code. However, section 552.111 is a discretionary exception to disclosure that does not make information confidential under the Act. *See Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 470 at 7 (1987) (statutory predecessor to section 552.111 is subject to waiver).* Therefore, the department may not withhold any of the submitted information under section 552.111 of the Government Code. However, as section 552.101 of the Government Code protects information made confidential under law, we will consider TWIA’s arguments for the submitted information under this exception.

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, such as section 36.252 of the Insurance Code, which provides:

(a) Information or material acquired by the department that is relevant to an investigation is not a public record for the period that the department determines is relevant to further or complete an investigation.

(b) Investigation files are not open records for purposes of [the Act], except as specified herein.

Ins. Code § 36.252. Section 36.251 of the Insurance Code states “investigation file”

means any information collected, assembled, or maintained by or on behalf of the department with respect to an investigation conducted under this code or other law. The term does not include information or material acquired by the department that is:

- (1) relevant to an investigation by the insurance fraud unit; and
- (2) subject to Section 701.151 [of the Insurance Code].

*Id.* § 36.251. TWIA states, and provides documentation stating, the submitted information consists of a case file pertaining to an investigation by the department's enforcement division. TWIA reported the underlying issues to the department for investigation. Under section 36.252 of the Insurance Code the investigation file must be withheld under section 552.101 of the Government Code until such time as the department determines the submitted information is no longer relevant to further or complete its investigations. Upon review, we find the submitted information pertains to a completed investigation. Accordingly, we conclude the department may not withhold the submitted information on this basis.

TWIA also asserts portions of the remaining 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 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).

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, 2210.051(b) (to engage in business of insurance in Texas, property insurer must be member of the association); *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. *Id.* § 2210.001. In addition, you state TWIA is an insurance company. *See id.* §§ 2210.053(a)(1), 2210.203(a); *see also Tex. Windstorm Ins. Ass’n v. Poole*, 255 S.W.3d 775, 777 (Tex. App.—Amarillo 2008, pet. denied) (the association 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. We understand the requestor is a nonaffiliated third party. *See* 15 U.S.C. § 6809(5); 28 T.A.C. § 22.2(20).

TWIA seeks to withhold information regarding particular individual policyholders’ names, addresses, phone numbers, and claim numbers under the GLB Act and chapter 22 of title 28 of the Texas Administrative Code. TWIA states this information was provided to it for the purpose of obtaining insurance and is also information resulting from transactions with insureds or services performed for insureds by TWIA, a regulated financial institution. *See* 15 U.S.C. § 6809(4)(A), 16 C.F.R. § 313.3(o)(1). TWIA informs us it provided this information to the department pursuant to the department’s regulatory authority, which was not a violation of the GLB and did not waive confidentiality. *See* 15 U.S.C. § 6802(e)(5) (providing specific exception for disclosure to state insurance authorities). TWIA does not indicate it provided opt out notices to the insureds. Because the names and addresses were provided to TWIA by the insureds in order to obtain a service, this information falls under the definition of PIFI. *See generally Individual Reference Services 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 these representations and our review, we determine the department 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 insureds' names, contact information, and policy numbers. Accordingly, the information we have marked must be withheld from disclosure under section 552.101 in conjunction with the GLB Act. However, because the claim numbers TWIA seeks to withhold do not identify the insured individuals, this information does not constitute PIFI, and may not be withheld on this basis.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the GLB Act. The remaining information must be released.

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](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,



Cynthia G. Tynan  
Assistant Attorney General  
Open Records Division

CGT/ag

Ref: ID# 439948

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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