BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

In the Matter of:	)	
	)	No. O-14-001
Opinion requested by	)	October 16, 2014
Dana Hollinger	)	
	)	
	)	

BY THE COMMISSION: Dana Hollinger is a board member of the California Public Employees' Retirement System. She has requested exemption from the Act's general requirement that an official disclose every source of income on his or her Statement of Economic Interests, Form 700. Under procedures established by Regulation 18740, we treat this inquiry as a request for an opinion of the Fair Political Practices Commission (the "Commission") on the following question:

I. Question

May Ms. Hollinger decline to identify on her Statement of Economic Interests individuals that are clients of her firm?

II. Conclusion

Yes. In light of all the circumstances, Ms. Hollinger has established sufficient cause for the exemption she seeks from the disclosure requirements of Government Code Section 87207(b)(2).

III. Facts Presented.[1]

Dana Hollinger was appointed to the Board of the California Public Employees' Retirement System on May 29, 2014. In her private capacity, Ms. Hollinger owns an insurance agency, Dana Hollinger Group. Ms. Hollinger is licensed by the California Department of Insurance.

On June 27, 2014, Ms. Hollinger filed an assuming office Statement of Economic Interests, Form 700, but she declined to identify individuals that are clients of her firm. Instead, consistent with Regulation 18740, she attached a brief statement as follows:

> "I am not disclosing the identities of the individual clients of my business, Dana Hollinger Group (DHG.) DHG provides life insurance policies for estate and financial planning. I am a licensed insurance

[1] The Commission does not act as a finder of fact when it issues legal opinions. The opinion is applicable only to the extent that facts provided to us are correct, and that all of the material facts have been provided. (*In re Oglesby* (1975) 1 FPPC 71.)

agent/broker ("Licensee") with the California Department of Insurance (CDI). As a Licensee, I am subject to privacy rules promulgated by CDI under Section 504 of the Gramm-Leach-Blilley Act (GLBA). Under these rules, licensees are prohibited from disclosing any non-public personal information about consumers without the consumers' prior express permission. Disclosing that someone is a consumer of DHG who purchased an insurance product or service from a particular carrier sufficient to generate a commission of $10,000 is non-public personal information I am prohibited from disclosing under the CDI rules and the GLBA.

"I can also certify that, to the best of my knowledge, I have not and will not make, participate in making or attempt to use my official position to influence any decision of the California Public Employees' Retirement System when to do so constituted a violation of Government Code Section 87100 and related statutes."

Under the procedure established by Regulation 18740, the matter was presented to the Executive Director as an "exemption request." After review of the law and facts, the Executive Director granted the requested exemption. However, the Commission is required to approve any exemption, and Regulation 18740(e) provides that the official's explanation for non-disclosure, if approved by the Executive Director, shall be treated as an opinion request.

IV. Analysis

As a preliminary matter, in requesting the exemption, Ms. Hollinger affirms that she has not and would not make, participate in making, or in any way use her official position to influence a governmental decision in violation of Section 87100 concerning any source of income or other economic interest. Ms. Hollinger's request for exemption from the Act's requirement that candidates and public officials disclose their financial interests touches on one of the Act's most important purposes, as described in section 81002(c):

"(c) Assets and income of public officials which may be materially affected by their official actions should be disclosed and in appropriate circumstances the officials should be disqualified from acting in order that conflicts of interest may be avoided."

The general provision governing disclosure of income under the Act is Section 87207, and Ms. Hollinger's request implicates subdivision (b)(2) of the statute, which requires disclosure of:

"The name of every person from whom the business entity received payments if the filer's pro rata share of gross receipts from that

person was equal to or greater than the thousand dollars ($10,000) during a calendar year."

However, as Ms. Hollinger points out, her disclosure of the financial data in question is also controlled by federal law. According to the Federal Trade Commission's Gramm-Leach-Bliley Act Outline:

> "Subtitle A of Title V of the Gramm-Leach-Bliley Act ("GLB Act") has privacy provisions relating to consumers' financial information. Under these provisions, financial institutions have restrictions on when they may disclose a consumer's personal financial information to nonaffiliated third parties. Financial institutions are required to provide notices to their customers about their information-collection and information-sharing practices. Consumers may decide to 'opt out' if they do not want their information shared with nonaffiliated third parties. The GLB Act provides specific exceptions under which a financial institution may share customer information with a third party and the consumer may not opt out. All financial institutions are required to provide consumers with a notice and opt-out opportunity before they may disclose information to nonaffiliated third parties outside of what is permitted under the exceptions."

The GLB Act is enforced administratively by the Federal Trade Commission, and Section 6823 of the GLB Act provides for criminal penalties under limited circumstances.

Ms. Hollinger's exemption request requires us to balance the public interest in disclosure under the Act, against her fiduciary obligations with respect to her client information under federal law. After reviewing materials submitted to us, we concur in the Executive Director's recommendation finding that nondisclosure is appropriate under the circumstances of this case.

While the facts do not fit squarely in the language of the regulation, we note that disclosure of private financial information is a particular concern of federal statutory law, and that granting this exemption, under the facts before us, creates no risk that undisclosed conflicts of interest might threaten the integrity of governmental decisionmaking.

Approved by the Commission on October 16, 2014. Concurring: Chair Remke, Commissioners Casher, Eskovitz, Wasserman, and Wynne.

Joann Remke
Chair