BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

In the Matter of:	)	
	)	No. O-13-001
Opinion requested by	)	August 22, 2013
Davis Riemer	)	
	)	
	)	

BY THE COMMISSION: Davis Riemer was appointed to the Board of the Alameda-Contra Costa Transit District Retirement Plan (AC Transit) on April 15, 2013. In his private capacity, Mr. Riemer owns an investment advisory business, DHR Investment Counsel, Ltd. (DHR). DHR is a registered investment advisor with the Securities and Exchange Commission (SEC) under the Investment Advisers Act of 1940. Mr. Riemer's clients are individuals and families.[1]

Mr. Riemer has requested exemption from the Act's general requirement that an official disclose every source of income on his 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 Mr. Riemer decline to identify on his Statement of Economic Interests individuals that are clients of his firm?

II. Conclusion

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

III. Facts Presented.[2]

Davis Riemer was appointed to the Board of the AC Transit on April 15, 2013. In his private capacity, Mr. Riemer owns an investment advisory business, DHR Investment Counsel, Ltd. (DHR). DHR is a registered investment advisor with the Securities and Exchange Commission (SEC) under the Investment Advisers Act of 1940.

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[1] He has one corporate client, but that client is located, and doing business, outside the District's jurisdiction and would not otherwise come within the disclosure requirements applicable to Mr. Riemer.

[2] 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.)

On May 15, 2013, Mr. Riemer filed an assuming office Statement of Economic Interests, Form 700, but he declined to report individuals who are investors through the company. Instead, consistent with Regulation 18740, he attached a brief statement as follows:

> "I am not disclosing the identities of the individual clients of my business, DHR Investment Counsel, Ltd. (DHR). DHR provides investment advisory services, and I am a registered investment advisor with the Securities and Exchange Commission (SEC). As a registered investment advisor, I am subject to the SEC privacy rules promulgated under Section 504 of the Gramm Leach-Bliley Act. Under these rules, registered investment advisors are prohibited from disclosing any non-public personal information about their individual clients without those customers' prior express permission. Since DHR is compensated for its services based upon a percentage of a client's investments under management with the firm, disclosing that an individual is a client of DHR would disclose that the client had at least a certain amount of assets under management with the firm. This is non-public personal information that DHR is prohibited from disclosing under the SEC rules.
>
> "I can also certify that, to the best of my knowledge, I have not and will not make, participate in making, or in any way attempt to use my official position to influence any decision of the Retirement System when to do so constituted or would constitute a violation of Government Code Section 87100 and related statutes."

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

IV. Analysis

As a preliminary matter, in requesting the exemption, Mr. Riemer affirms that he has not and would not make, participate in making, or in any way use an official position to influence a governmental decision in violation of Section 87100 concerning any source of income or other economic interest. Mr. Riemer'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 Mr. Riemer's request implicates in particular 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 ten thousand dollars ($10,000) during a calendar year."

However, as Mr. Riemer points out, his disclosure of the financial data in question is also controlled by federal law. According to the Federal Trade Commission's Gramm-Leach-Bliley Act ("GLBA") 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 GLBA is enforced administratively by the Federal Trade Commission and Section 6823 of the GLBA provides for criminal penalties under limited circumstances.

Mr. Riemer's exemption request requires us to balance the public interest in disclosure under the Act, against his fiduciary obligations with respect to his client information under federal law. After reviewing materials submitted to us, we concur in the staff recommendation finding that nondisclosure is appropriate under the peculiar 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 August 22, 2013. Concurring: Chair Ravel, Commissioners Casher, Wasserman, and Wynne,

Ann Ravel
Chair