

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF STATE
BUREAU OF SECURITIES REGULATION**

IN THE MATTER OF:)

Local Government Center, Inc.; et al.)

Case No.: C-2011000036)

**LGC'S LIMITED (AND CONTINGENT) ASSENT
TO THE BUREAU'S MOTION FOR PROTECTIVE ORDER
AND CONFIDENTIAL TREATMENT**

LGC has no objection to the concept of a Protective Order, allowing the Bureau to view unredacted confidential information contained within LGC's financial data, to expedite the process of the Bureau's examination. There are additional impediments to the proposal which need to be addressed, however, beyond those considered in the Bureau's Motion or its proposed Orders. Further, the Bureau has already, in this very matter, inadvertently mistreated confidential information. LGC accordingly believes any protective order needs to establish a protocol for the handling of all confidential information, regardless of the source, to protect third parties' rights.

Had the Bureau consulted LGC prior to filing its Motion, these aspects could have been included in the original Motion. Since then, the parties have discussed the necessary terms of a proposed Order. The Bureau declines to jointly submit an Order which sufficiently deals with these additional impediments, so LGC submits this pleading on its own.

LGC's Proposed Order Satisfies Its Obligations Under HIPAA. The Health Insurance and Accountability Act of 1996 ("HIPAA") prohibits the release of protected health information to third parties. Such information is inextricably linked to and contained within LGC's electronic data. An order of this type is necessary to allow review of such unredacted

information, and LGC has no objection to such an order, if the terms sufficiently address the obligations on LGC.

LGC's Proposed Order Satisfies RSA 5-B:7. This statute also applies to LGC's financial data. It provides:

Confidentiality of Certain Claims Information. Notwithstanding any provision of law to the contrary, any information of any pooled risk management program formed or affirmed under this chapter pertaining to claims analysis or claims management shall be privileged and confidential and not subject to disclosure to any third party.

LGC's financial data, in some instances, contain claims management information. LGC has no objection to the Bureau's review of financial information that may contain claims analysis or claims management material, if the Hearing Officer issues his Order with terms that protect LGC from subsequent criticism that it violated this portion of State law.

LGC's Proposed Order Avoids Further Disclosure under RSA 91-A. LGC believes the records it will show the Bureau qualify as confidential information, exempt from RSA 91-A, and the Hearing Officer should consider them so. The materials then would no longer be exposed to further disclosure under RSA 91-A requests to the Bureau. An Order binding the Bureau to destroy or turn over confidential information to LGC at the conclusion of this hearing process will prevent future releases of such confidential information.

LGC's Proposed Order Applies to Individuals. The order must apply to individuals, not just "the Bureau", and LGC's Proposed Order does so.

LGC's Proposed Order Applies to Third-Party Discovery. LGC has learned that the Bureau is simultaneously sending out third party subpoenas, seeking some of the same information it requested from LGC as part of its on-site examination. (For example, compare Request No. 15 in **Exhibit 1, the letter to LGC from the Bureau of December 16, 2011**

(“Please provide ... copies of all bank account statements for LGC from FY 2006 through present”) with the **subpoena to Citizens Bank issued by the Bureau on the same date, Exhibit 2**, requesting certain documents concerning LGC’s account with the Bank (“you are directed to search for and produce, at least, the following documents: (a) monthly statements”). Also, compare Request No. 8 in Exhibit 1, directed to LGC (“Please provide ... monthly third party financial management account statements for all investments”) with Request 3 of the **subpoena issued to Wellington Management Company, LLP, Exhibit 3** (“please provide ... the monthly and/or periodic investment account statements or reports provided to any of the LGC entities...”).)

LGC is unaware of the number or scope of the subpoenas the Bureau has issued, but on information and belief the Bureau has sent them to other third parties. It is likely that the information the Bureau receives in those subpoenas will contain LGC-derived personal health information or claims analysis and claims management information. If the Order fails to concern itself with that information, confidential information of third parties will be at risk for exposure.

The Bureau Has Previously Released Confidential Information. The Bureau already has in its possession both unredacted and redacted versions of documents obtained during its investigation. Many of the documents contain personal health information or other confidential information. There is an existing conflict between LGC and the Bureau over the treatment of those documents. On at least one occasion in this matter, the Bureau has inadvertently exposed third parties’ confidential information in a public filing, which was only rectified at LGC’s insistence. (See the December 5, 2011 filing by Adrian Larochelle of the Bureau, withdrawing Exhibit A to the Bureau’s Response to LGC’s Motion to Compel.)

Redactions Should be Ordered, and Confidentiality Protected Through Particular Future Treatment of the Information. Any use or disclosure of the information which the Bureau receives, either as part of its on-site examination or through its subpoenas, should be redacted in a way that avoids disclosure of privileged or confidential or otherwise protected information before it is publicly used or revealed. An order to this effect would allow the Bureau to examine the information it requires, without violating either HIPAA or RSA 5-B:7.

Further, to ensure that no future disclosures are made, either intentionally or inadvertently, the Hearing Officer should order the Bureau to either destroy or return to LGC all such information, obtained from whatever source, at the conclusion of the hearing process.

Future Proceedings. LGC has no objection to the Bureaus' review of unredacted material, in order to expedite the review process and keep the hearing process as efficient as possible, subject to an appropriate order which controls the handling of the confidential information in that material. In submitting to an order in this case, however, LGC should not be precluded from taking different positions in future or other proceedings.

Proposed Order. LGC has submitted a Proposed Order for consideration by the Hearing Officer.

WHEREFORE, LGC asks the Hearing Officer:

- a. To consider the necessary additional limitations on LGC's disclosure of financial information to the Bureau, and to issue an Order that allows review of unredacted information by the Bureau in a manner consistent with LGC's obligations; and
- b. To grant such other and further relief as may be just and proper.

Respectfully submitted,
LOCAL GOVERNMENT CENTER, INC.;
LOCAL GOVERNMENT CENTER
REAL ESTATE, INC.;
LOCAL GOVERNMENT CENTER
HEALTHTRUST, LLC;
LOCAL GOVERNMENT
HEALTHTRUST, LLC;
LOCAL GOVERNMENT CENTER
PROPERTY-LIABILITY TRUST,
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HEALTHTRUST, INC.;
NEW HAMPSHIRE MUNICIPAL
ASSOCIATION PROPERTY-
LIABILITY TRUST, INC.;
LGC-HT, LLC;
LOCAL GOVERNMENT CENTER
WORKERS' COMPENSATION
TRUST, LLC; AND
MAURA CARROLL,

By Their Attorneys:
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Dated: December 21, 2011

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