



February 23, 2023

Mr. Bill Mundell
Assistant Chief Deputy
Arizona Office of Attorney General
2005 N. Central Avenue
Phoenix, AZ 85004-2926

**Re: Public Records Requests Office of Attorney General and
Department of Insurance and Financial Institutions**

Dear Mr. Mundell:

In follow-up to a recent meeting between Attorney General Mayes and consumer advocates, we are writing to share our experiences and concerns with the lack of transparency at the Office of Attorney General's Regulatory Sandbox Program (RSP) and at the Department of Insurance and Financial Institutions (DIFI).

The Center for Economic Integrity ("Center") and the William J. Morris Institute for Justice ("MIJ") participated in the debate over creating a "sandbox" in the Office of Attorney General. Since its inception, both the Center and MIJ have tried to monitor its operations to inform our members and to ensure public accountability. In a future letter, we will detail our concerns and recommendations regarding the RSP. This letter is focused solely on the need for transparency.

The Center researches and reports to our members on licensing, supervision, and enforcement of Consumer Lenders, Money Transmitters and Sales Finance companies making car title loans (Secondary Motor Vehicle Finance Transaction loans) in Arizona. MIJ protects the most basic legal rights of Arizona consumers, interacting with public programs and services administered by the State of Arizona, often utilizing public records requests under A.R.S. § 39-121 *et seq.* as a tool to gather information regarding the State's official activities and publicly funded activities.

In our view, both the Office of Attorney General (OAG) and the Department of Insurance and Financial Institutions (DIFI), as advised by OAG staff, are misinterpreting the statutory provisions that restrict public information. Financial institutions and enterprises licensed by DIFI are subject to A.R.S. § 6-129 and, in the case of "enterprises," also A.R.S. § 6-129.01. The operation of the RSP is covered by A.R.S. § 41-6510. Agencies are interpreting these provisions to deny public information about actions of the agencies and communications by the agencies. Their responses go far beyond protecting proprietary commercial information from companies seeking licensing or admission to the RSP.

We request that your office reevaluate the application of these provisions and either make changes in the OAG's responses to public records requests or advocate in favor of legislative changes to improve the transparency and accountability of financial regulation.

Arizona's Sandbox is a Black Box

Despite the clear public interest in monitoring the operations of a special program that permits financial companies to operate in Arizona without obtaining licenses, we have had basic information requests repeatedly denied. A modicum of transparency is essential to evaluate the impact of the RSP program and to identify which consumer protections apply to RSP products and/or services.

A.R.S. § 41-5610 states "Records that are **submitted to or obtained by** the attorney general in administering this chapter are not public records or open for inspection by the public." In our view, that limitation does not apply to communications from OAG or requirements imposed by the attorney general, to calendars or communications demonstrating that the OAG consulted with DIFI on each application as required by law, or to basic identifying information that would empower consumers to know how to find the company operating in Arizona without a license and which legal protections applied.

When OAG began admitting companies to the RSP in lieu of the otherwise required DIFI license, the Center requested basic identifying information, comparable to public information provided by DIFI for licensed entities, include providing legal name, address, telephone number, email address, website address and the RSP registration number assigned to participants such as Sweetbridge NFP, Inc., admitted to test a car title loan product. We asked for records on (1) the type of license from DFI that would have been required, (2) consumer protection requirements that will apply to or have been imposed on Sweetbridge at the discretion of OAG; (3) consumer disclosure requirements that apply or will be imposed; (4) specific reporting requirements the OAG imposed; and (5) any other limits or requirements the OAG imposed on the RSP participant, such as limits on the size of loans or transactions or aggregate amount of loans or transactions. We asked for records reflecting the analysis conducted by the OAG to determine that the claimed "innovation" would benefit consumers as well as records demonstrating that the OAG consulted with DFI regarding the application as required by law.

The OAG only provided the participation number in response to our first inquiry and stated: "Pursuant to A.R.S. § 41-5610, all other records and information is confidential and therefore not subject to public record." (Exhibit 1.a) A subsequent OAG letter dated December 13, 2018, stated that "Pursuant to A.R.S. § 41-5610, all records and information you are requesting are confidential and therefore not subject to public record." (Exhibit 1.b)

We received similar non-responses to other requests for information on RSP participants. All the information requested either duplicated public information that DIFI provides for licensees or requested information on actions and requirements of the OAG, not proprietary company information. In the case of companies admitted to the RSP in lieu of a Money Transmitter

license, the request for protections and conditions imposed by the OAG were particularly important since the RSP law did not require that any safety and soundness requirements of the Money Transmitter law apply to sandbox companies. Without disclosure from the OAG on discretionary requirements for a bond or liquid assets, consumers have no way of knowing whether they have any protection while doing business with a Money Transmitter in the RSP.

Clearly identifying which license was forgone by each RSP participant is essential to know which consumer protections applied as a matter of law. Sweetbridge proposed to market a loan secured by the borrower's vehicle. Such a loan can be made as a Secondary Motor Vehicle Finance Transaction (SMVFT) (Sales Finance license) or as a Consumer Lender loan (Consumer Lender license). If Sweetbridge loans were SMVFT transactions, the company could charge up to 204% APR and make balloon payment loans. If Sweetbridge was admitted in lieu of a Consumer Lender license, the loans would have been capped at 36% for loans up to \$3,000 plus a 5% fee and would have required installment payments. The OAG refused to provide this information in response to our public records requests. In some cases, the OAG press releases stated some information about participants and provided links to some company websites but not uniformly for all participants. (Exhibit 2)

In 2019, the RSP law was amended to permit companies to be admitted that would not otherwise have been required to obtain a license from DIFI. At that point, it became even more important for the OAG to identify whether each participant would have required a specific license or not to know which enumerated protections applied to each company. CEI sent a request to the RSP email box to ask which license, if any, each of the current participants would have otherwise required. OAG staff told us to ask DIFI. (Exhibit 3, Part I) When we did so (Exhibit 3, Part II), DIFI denied all information requested and cited A.R.S. § 6-129 as well as A.R.S. § 41-5619. (Exhibit 3, Part III) We view this nonresponse as circular obfuscation.

Department of Insurance and Financial Institutions Information

DIFI, the agency that licenses and supervises financial companies, is also nonresponsive to requests for information. Because OAG may provide guidance to the DIFI staff that respond to public records requests, we request your attention here as well.

DIFI makes some information public on its website, but a public records request must be filed to get a full list of companies licensed under each type of license. This information used to be posted on the DFI website for the public to identify all companies licensed in each category. Requests for information on agency generated actions, statements to trade groups, communications, calendars, examination manuals are denied pursuant to A.R.S. § 6-129, which states: "Except as otherwise provided by this title, **the records of the department relating to financial institutions** are not public documents, are not open for inspection by the public and the director and any member of the director's staff may not disclose any information obtained in the discharge of official duties to any person not connected with the department."

Subsection C spells out the limited instances where the director may disclose enumerated information.

Arizona law makes more information public for Financial Enterprises, companies under the jurisdiction of DIFI that are not a financial institution. Sales Finance licensees making car title loans are designated Finance Enterprises. A.R.S. § 6-129.01 states: “All papers, documents, reports and other written instruments filed with the deputy director pursuant to the requirements of this title by an enterprise shall be open to public inspection, except that the deputy director may withhold from public inspection for such time as the deputy director considers necessary any information which in the deputy director’s judgment the public welfare or the welfare of the financial enterprise requires to be withheld.”

In our view, statutory limits on disclosure of licensee information and agency actions should apply to commercial proprietary information provided by companies applying to be licensed and overseen by the department, **not to information about department policies, actions, meetings, or directives.** For example, DIFI denied our requests for information to demonstrate that the RSP at the OAG consulted with DIFI regarding companies that applied to enter the sandbox as the law requires the OAG to do. DIFI refused to disclose if it has examination manuals that require its staff to check licensees for compliance with the federal Military Lending Act. A simple yes (with a copy of the manual) or no would have been responsive. Instead, we were told that A.R.S. 6-129 prohibits them from responding.

Does DIFI Authorize Sales Finance Licensees to Make Payday Loans?

As we reported to the OAG, Sales Finance licensees making Secondary Motor Vehicle Finance Transaction loans under Title 44, Chap 2.1 are charging title loan triple-digit rates for loans that are not secured by a clear title to the borrower’s vehicle. A few years ago, advocates were told that a verbal communication from the Office of Attorney General to the director of DFI sanctioned this end run around Arizona’s voter-supported usury law. In 2022, we asked for documentation from both the OAG and DIFI to verify that claim, including communications with companies or trade groups, information provided to public interest groups or legislators...anything to document that DIFI had a legal basis from the OAG for permitting title lenders to make payday loans.

In response to the Center’s public records request, the OAG provided the 2010 press release, FAQs, and letter from Attorney General Goddard issued when the payday loan law expired and told us that communications between the OAG and DIFI were protected as attorney-client communications and work product. (Exhibit 4, Part I) A similar request to DIFI (Exhibit 4, Part II) was denied on the basis that “records you have requested are confidential pursuant to A.R.S § 6-129 and therefore the Department cannot produce any responsive records regarding your request.” (Exhibit 4, Part III) Our appeal for reconsideration (Exhibit 4, Part IV), since Sales Finance companies are Financial Enterprises and subject to A.R.S. 6-129.01, was also denied. (Exhibit 4, Part V)

As the new Attorney General and staff begin the work of protecting consumers and enforcing Arizona law, we urgently request a review of the practices and standards guiding responses to public record requests to achieve maximum transparency in the operations of the Office of Attorney General and state agencies such as the Department of Insurance and Financial Institutions. The OAG's oversight and administration of the RSP includes core consumer protection functions and standards. *See, e.g.,* A.R.S. §§ 41-5603(F); 41-5604; 41-5605(G); 41-5606(A)(5), (C). Transparency regarding key facts of RSP participation is critical to ensuring the protection of Arizona consumers and public trust in RSP processes.

If current law unduly restricts public information, we urge the OAG to request legislative changes. The result should be improved public confidence, fair competition for entities regulated by the state, and transparency and accountability at public agencies.

Please let us know if we can provide further information.

Sincerely,

Kelly Griffith
Director
Center for Economic Integrity
502-250-4416

Jean Ann Fox
Adviser
Center for Economic Integrity
928-775-4729

Drew P. Schaffer
Director
William E. Morris Institute for Justice
602-252-3422

Exhibits:

1. OAG responses, PRR 2018-3780-105, re: participation of Grain Technology, Inc. in the Regulatory Sandbox Program
 - (a) November 19, 2018, and
 - (b) December 13, 2018
2. OAG response, PRR2018-3779-105, re: participation of Sweetbridge NFP, Inc. in the Regulatory Sandbox Program, December 13, 2018
3. Part I: CEI email to RSP re: Cryptoenter Corp., February 17, 2022, and electronic communication from Sam Fox, Assistant Attorney General, February 22, 2022.
Part II: CEI Public Records Request to DIFI in May 2022 re: participation of Cryptoenter Corp. in the Regulatory Sandbox Program
Part III: Electronic communication from Gio Espinosa, Regulatory Legal Affairs Officer, DIFI, May 12, 2022 re: Cryptoenter Corp. in the Regulatory Sandbox Program
4. Part I: OAG response in July 2022 re: PRR2022-61076-1094 authorization to make registration loans under the Secondary Motor Vehicle Finance Transaction law (Electronic communication from Rachelle Lump, Executive Assistant, OAG)
Part II: CEI Public Records request to DIFI, July 26, 2022 re: questions about authorization to make registration loans under the Secondary Motor Vehicle Finance Transaction law
Part III: DIFI response in August 2022 re: questions about authorization to make registration loans under the Secondary Motor Vehicle Finance Transaction law (Electronic communication from Gio Espinosa, Regulatory Legal Affairs Officer)
Part IV: CEI Letter to DIFI in Aug. 2022 reiterating questions about authorization to make registration loans under the Secondary Motor Vehicle Finance Transaction law
Part V: DIFI response on September 14, 2022 to CEI letter of August 8, 2022

Exhibit 1

OAG responses in 2018 to public records request PRR 2018-3780-105 re: participation of Grain Technology, Inc. in the Regulatory Sandbox Program

(a)



MARK BRNOVICH
ATTORNEY GENERAL

OFFICE OF THE ARIZONA ATTORNEY GENERAL
EXECUTIVE OFFICE

Public Information Officer

November 19, 2018

Jean Ann Fox



Jafox1833@gmail.com

Dear Ms. Fox:

Thank you for contacting the Arizona Attorney General's Office ("AGO"). This letter serves as the response to your public records request dated November 9, 2018. Specifically, your request sought the following:

Original Request

"Regarding Grain Technology, Inc., admitted to the Regulatory Sandbox Program (RSP):
Contact information for Grain Technology, Inc., including full legal name, address, telephone number/s, email address/es, and website address/es. The Arizona RSP registration number assigned to Grain Technology, Inc. Which license from the Arizona Department of Financial Institutions would Grain Technology have been required to obtain to do business in Arizona if not admitted to the RSP? How did the Office of Attorney General (OAG) determine that the "innovation" claimed by Grain Technology qualifies for the RSP? How did the OAG determine that the claimed "innovation" benefits consumers in Arizona?
List of consumer protection laws or requirements imposed on Grain Technology by the OAG.
Maximum APR (interest and fees) Grain Technology will be able to impose on any credit product.
List of consumer disclosures or requirements for information to consumers required by the OAG. For example, will Grain Technology be required to make the disclosures required by the Consumer Lender law at 6-631?
List of specific reporting requirements imposed on Grain Technology by the OAG.
What types of consumer data will Grain Technology collect? With whom will Grain Technology share that information? How will Grain Technology safeguard consumer information? The privacy policy Grain Technology will use in Arizona.

Response:

Grain Technology, Inc.'s participation number for the Regulatory Sandbox Program is 2018003. Pursuant to A.R.S. § 41-5610(A), all other information is confidential and therefore not subject to public record.

Sincerely,

A handwritten signature in black ink, appearing to read "Raehelle Lump".

Raehelle Lump
Public Records Officer

(b)



MARK BRNOVICH
ATTORNEY GENERAL

OFFICE OF THE ARIZONA ATTORNEY GENERAL
EXECUTIVE OFFICE

Public Information Officer

December 13, 2018

Jean Ann Fox



Jafox1833@gmail.com

PRR2018-3780-106

Dear Ms. Fox:

Thank you for contacting the Arizona Attorney General's Office ("AGO"). This letter serves as the response to your public records request dated December 13, 2018. Specifically, your request sought the following:

Original Request

"Please provide any records reflecting the agreement between the Office of Attorney General and Grain Technology, Inc. (RSP participant) concerning the RSP participant's admission to and participation in the Arizona Regulatory Sandbox Program. Responsive records include, but are not limited to, those that reflect:

- The type of license from the Arizona Department of Financial Institutions the participant is not required to obtain that otherwise would have been required.
- Consumer protection requirements that will apply to or have been imposed on the RSP participant.
- Consumer disclosure requirements that will apply to or have been imposed on the RSP participant.
- Specific reporting requirements the OAG imposed on the RSP participant.
- Any other limits or requirements the OAG imposed on the RSP participant, such as limits on the size of loans or transactions or aggregate amount of loans or transactions.

Please provide records reflecting the analysis conducted by the Office of Attorney General to determine that the claimed "innovation" by this participant benefits consumers.

Please provide records demonstrating that the Office of Attorney General consulted with the Arizona Department of Financial Institutions regarding this applicant to the Regulatory Sandbox Program.

Response:

Pursuant to A.R.S. § 41-5610, all records and information you are requesting are confidential and therefore not subject to public record.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jafox", written over a circular stamp.

Public Records Officer

Exhibit 2

OAG response in 2018 to public records request PRR2018-3779-105 for information re: participation by Sweetbridge NFP, Inc. in the Regulatory Sandbox Program




MARK BRNOVICH
ATTORNEY GENERAL

OFFICE OF THE ARIZONA ATTORNEY GENERAL
EXECUTIVE OFFICE

Public Information Officer

December 13, 2018

Jean Ann Fox


Jafox1833@gmail.com

PRR2018-3779-105

Dear Ms. Fox:

Thank you for contacting the Arizona Attorney General's Office ("AGO"). This letter serves as the response to your public records request dated December 13, 2018. Specifically, your request sought the following:

Original Request

"Please provide any records reflecting the agreement between the Office of Attorney General and Sweetbridge NFP, Inc. (RSP participant) concerning the RSP participant's admission to and participation in the Arizona Regulatory Sandbox Program. Responsive records include, but are not limited to, those that reflect:

- The type of license from the Arizona Department of Financial Institutions the participant is not required to obtain that otherwise would have been required.
- Consumer protection requirements that will apply to or have been imposed on the RSP participant.
- Consumer disclosure requirements that will apply to or have been imposed on the RSP participant.
- Specific reporting requirements the OAG imposed on the RSP participant.
- Any other limits or requirements the OAG imposed on the RSP participant, such as limits on the size of loans or transactions or aggregate amount of loans or transactions.

Please provide records reflecting the analysis conducted by the Office of Attorney General to determine that the claimed "innovation" by this participant benefits consumers.

Please provide records demonstrating that the Office of Attorney General consulted with the Arizona Department of Financial Institutions regarding this applicant to the Regulatory Sandbox Program.

Response:

Pursuant to A.R.S. § 41-5610, all records and information you are requesting are confidential and therefore not subject to public record.

Sincerely,


Public Records Officer

Exhibit 3

Part I: CEI email to RSP re: Cryptoenter Corp., February 17, 2022, and electronic communication from Sam Fox, Assistant Attorney General, February 22, 2022

----- Forwarded message -----

From: **Jean Fox** <jafox1833@gmail.com>
Date: Thu, Feb 17, 2022 at 10:30 AM
Subject: Inquiry on Sandbox Participant
To: <sandbox@azag.gov>
Cc: Kelly Griffith <kelly@economicintegrity.org>

Currently Cryptoenter is listed as a participant in the Regulatory Sandbox Program. Was Cryptoenter admitted in lieu of an otherwise required Money Transmitter license from DIFI?

If so, what specific service or product is Cryptoenter testing that requires a Money Transmitter license?

Thank you

Jean Ann Fox

Center for Economic Integrity

----- Forwarded message -----

From: **Fox, Samuel** <Samuel.Fox@azag.gov>
Date: Tue, Feb 22, 2022 at 12:12 PM
Subject: RE: Inquiry on Sandbox Participant
To: Jean Fox <jafox1833@gmail.com>
Cc: Kelly Griffith <kelly@economicintegrity.org>

Hello Ms. Fox,

Thank you for your interest in the Arizona FinTech Sandbox.

As mentioned on the website, Cryptoenter Corp. is a blockchain-based platform that integrates with banks to provide bank customers with cryptocurrency exchange and transfer services. That is an explanation of the test that Cryptoenter is conducting within the Sandbox.

Questions regarding whether the Department of Insurance and Financial Institutions (“DIFI”) would require Cryptoenter to have a Money Transmitter license should be directed to DIFI.

Thank you,

Sam Fox

Samuel Fox

Assistant Attorney General



Office of the Attorney General

Consumer Protection & Advocacy Section


Civil Litigation Unit

2005 N. Central Ave., Phoenix, AZ 85004

Phone: 602-542-7725

Email: Samuel.Fox@azag.gov

**Part II: CEI Public Records Request to DIFI in May 2022 re: participation of
Cryptoenter Corp. in the Regulatory Sandbox Program**

Arizona Department of Financial Institutions	 Page 1 of 2
Public Records Request	

**Please print or type your request.
Be specific.
Add additional pages as needed.**

I, the undersigned, hereby request (check the appropriate box)

- Email
 Mail
Copy Fee: \$.25 per 8½ x 11 page.
 Certification Fee: \$2.00 per page certified.

Department use only.
Do not write or staple in this space.

Date
Stamp
Here

of the following public records:

Please provide all information regarding consultation by the Office of Attorney General Regulatory Sandbox Program on Cryptoenter Corp., admitted to the RSP July 10, 2021., including but not limited to previous licensing and disciplinary history for this company with DIFI and information on "whether the applicant could obtain a license or other authorization from (DIFI) after exiting the regulatory sandbox" as required by A.R.S. 41-5604. Please specify which type of license Cryptoenter would be eligible for after exiting the RSP, if any.

Please provide all information regarding consultation by the Office of Attorney General Regulatory Sandbox Program on Valley of the Sun Mint, LLC (d/b/a Satoshiware) admitted to the RSP March 4, 2022, including but not limited to previous licensing and disciplinary history for this company with DIFI and information on "whether the applicant could obtain a license" from DIFI after exiting the regulatory sandbox. Please specify which type of license Valley of the Sun Mint, LLC/Satoshiware would be eligible for after exiting the RSP, if any. For both inquiries, please include notes, emails, policy statements, calendars showing meetings or consultations or any other communications between the Department and the Office of Attorney General Regulatory Sandbox Program regarding these two current particip0ants.

- I am requesting this information be sent by email
 I am requesting this information be sent by mail

Commercial Purpose (See Page 2 of this form)

I certify that the following statement setting forth the commercial purpose for which the above requested public records will be used it true, correct and complete.

I declare that I have read and understand A.R.S. § 39-121.03. (See Page 2 of this form)

Signature of Requesting Party		Date of signing	
Printed Name of Requesting Party Jean Ann Fox			
Address [REDACTED]			
City [REDACTED]			
Home Phone (include area code) 928-775-4729		State [REDACTED]	Zip code [REDACTED]
e-mail address jafox1833@gmail.com			

In-office record inspections also available. Please contact the Department for more information.

Telephone: (602) 771-2800 100 North 15th Ave, Suite 261	FAX (602) 381-1225	See our website at www.azdfi.gov
		Revised 06/15/18

**Part III: Electronic communication from Gio Espinosa, Regulatory Legal Affairs Officer
DIFI, May 12, 2022 re: Cryptoenter Corp. in the Regulatory Sandbox Program**

DocuSign Envelope ID: 2214281D-45E2-4A6F-A02E-015E1FAB4FAE



Enforcement, Innovation and Regulatory Policy Division
Arizona Department of Insurance and Financial Institutions
100 North 15th Avenue, Suite 261, Phoenix, AZ 85007-2630
Phone: (602) 364-3100 | Web: <https://difi.az.gov>

Douglas A. Ducey, Governor
Evan G. Daniels, Director

VIA EMAIL: jafox1833@gmail.com

May 12, 2022

RE: Sandbox Program Participants

Dear Ms. Fox:

The Arizona Department of Insurance and Financial Institutions ("Department") is in receipt of your March 10, 2022 public records request regarding consultations between the Department and the Office of the Attorney General relating to all current participants in the Sandbox Program.

Records received by the Department relating to participants in the Office of the Attorney General Regulatory Sandbox Program are confidential pursuant to Arizona Revised Statutes § 6-129. Additionally, while the Department does not administer the Regulatory Sandbox Program, please be aware that records and communications relating to the Sandbox Program are not public records or open for inspection pursuant to Arizona Revised Statutes § 41-5610.

If you have any questions, please contact me at 602-364-2902 or gjo.espinosa@difi.az.gov.

Sincerely,

Gio Espinosa

Gio Espinosa, Regulatory Legal Affairs Officer
Arizona Department of Insurance and Financial Institutions

Exhibit 4

Part I: OAG response in July 2022 re: PRR2022-61076-1094 about authorization to make registration loans under the Secondary Motor Vehicle Finance Transaction law

----- Forwarded message -----
From: **PublicRecords** <PublicRecords@azag.gov>
Date: Wed, Jul 20, 2022 at 1:13 PM
Subject: PRR2022-61076-1094
To: Jean Fox <jafox1833@gmail.com>

Ms. Fox,

In response to your public records request dated April 18, 2022 as clarified on May 2 and May 25, 2022, which requests for the period of 2008-2022: _

"I am seeking any policy statements, opinions, guidance, information, or any other official statements from the Office of Attorney General or any press releases, consumer information materials or presentations that address what forms of "security" are required for a loan to qualify as a Secondary Motor Vehicle Finance Transaction loan under 44-281(12). I am requesting any enforcement actions brought by the OAG against lenders that make SMVFT loans to borrowers who do **not** hold a clear title to their vehicle. Please identify any enforcement actions taken by the Office of Attorney General to enforce the Consumer Lender law **and/or** Title 44, Chap. 2.1 with any Sales Finance company making SMVFT loans defined by A.R.S. 44-281(12) or an unlicensed company required to be licensed as a Sales Finance company to make these loans. A copy of the complaint and the order that resolved each case is sufficient to help me understand the grounds for the OAG action and the outcome of the case for consumers." (Also from your May 25, 2022 email): "...I am looking for anything in writing from your office that explains the apparent policy reversal that has resulted in 81 percent of licensed title lenders now making "sham auto title loans" without any repercussions from DIFI or the Office of Attorney General.

The responsive records are provided herewith. Please note some responsive records were withheld pursuant to attorney-client privilege and work-product privilege.

<https://www.azag.gov/press-release/goddard-payday-lenders-departure-shows-repeal-working>

<https://www.azag.gov/press-release/goddard-aggressively-enforce-payday-loan-ban-operation-sunset> (Letter attached in this link, but also provided as separate attachment herewith.)

Rachelle Lump
Executive Assistant
Office of the Arizona Attorney General
2005 N. Central Avenue
Phoenix, AZ 85004
602-542-8351 Office
rachelle.lump@azag.gov



4 attachments

-  **FW_Public Records Request_Submission.pdf**
15K
-  **FW_PRR2022-61076-1094 5-2-22.pdf**
40K
-  **FW_PRR2022-61076-1094.pdf**
42K
-  **lettertolender.pdf**
119K

Part II: CEI Public records request to DIFI in July 2022 re: questions about authorization to make registration loans under the Secondary Motor Vehicle Finance Transaction law

Public Records Request to Arizona Department of Insurance and Financial Institutions

July 26, 2022

The following records are requested:

[...]

All writings from the Department of Insurance and Financial Institutions (or Department of Financial Institutions) on the form/s of security required or permitted for a cash loan to qualify as a "Secondary Motor Vehicle Finance Transaction" title loan as defined by A.R.S. 44-281.12 for the period 2008 through the present. This request includes, but is not limited to, (1) whether qualifying loans **must be secured by a clear title** to the vehicle owned by the borrower and/or that a **first lien** must be filed on the vehicle by the Sales Finance licensee; (2) whether qualifying loans **may be secured with the vehicle registration** held by a borrower who does not hold a clear title to the vehicle (typically called a "registration" loan); and (3) whether a Sales Finance licensee **may require that the borrower authorize access to the borrower's bank account** to collect payment as a condition of extending credit including by requiring a bank account number and routing number, blank check, Automated Clearing House or demand draft authorization, or debit card.

Specifically, requested writings include policy directives, emails, letters, memos, consumer information, or any other documents regarding required or permitted forms of "security" for loans to qualify as Secondary Motor Vehicle Finance Transaction loans defined by A.R.S. 44-281.12 including but not limited to communications with the title loan industry trade association, individual loan companies, or Sales Finance licensees; to DFI/DIFI staff in conducting examinations or investigating complaints; to public interest organizations or individuals; to members of the Arizona legislature or legislative committees; and public communications such as press releases and consumer brochures.

Jean Ann Fox

[...]

Part III: DIFI response in August 2022 re: questions about authorization to make registration loans under the Secondary Motor Vehicle Finance Transaction law



Jean Fox <jafx1833@gmail.com>

Public Records request

Gio Espinosa <gio.espinosa@difi.az.gov>
To: jafx1833@gmail.com

Fri, Aug 5, 2022 at 9:45 AM

Good morning Ms. Fox. Attached you will find a list as to your request as per the time frame noted. There are no further responsive records to your request pursuant to Arizona Revised Statutes ("A.R.S.") § 6-129 "records of the department relating to financial institutions are not public documents, are not open for inspection by the public and the director and any member of the director's staff may not disclose any information obtained in the discharge of the official duties to any person not connected with the department." The records you have requested are confidential pursuant to A.R.S. § 6-129 and therefore the Department cannot produce any responsive records regarding your request..

Thank you, Gio

Gioconda A. Espinosa
Regulatory Legal Affairs Officer
100 North 15th Avenue, Suite 261
Phoenix, AZ 85007-2630
AZ Department of Insurance and Financial Institutions
O: 602-364-2902 | Gio.Espinosa@difi.az.gov


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[Quoted text hidden]

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[Quoted text hidden]

 **SF licenses.xlsx**
95K

Part IV: CEI Letter to DIFI in August 2022 reiterating questions about authorization to make registration loans under the Secondary Motor Vehicle Finance Transaction law

August 8, 2022

[...*Jean Ann Fox home address removed*...]

Mr. Gioconda A. Espinosa
Regulatory Legal Affairs Officer
AZ Department of Insurance and Financial Institutions
100 North 15th Avenue, Suite 261
Phoenix, AZ 85007

Dear Mr. Espinosa,

In denying the Public Records request I filed with the Department of Insurance and Financial Institutions on July 26, 2022 regarding DIFI policy and guidance on Secondary Motor Vehicle Finance Transaction (SMVFT) loans made by Sales Finance licensees pursuant to Title 44, Chap. 2.1, you quoted A.R.S. §6-129 and claimed that the records I requested are confidential and that the Department cannot produce any responsive records regarding my request.

As explained below, I disagree and request that you reconsider the Department's response.

Sales Finance licensees that make SMVFT loans are not "financial institutions" as defined by A.R.S. §6-101(11) but are "financial enterprises" as defined by A.R.S. §6-101(9). The only licensees that the law classes as "financial institutions" are "banks, trust companies, savings and loan associations, credit unions, consumer lenders, international banking facilities and financial institution holding companies under the jurisdiction of the department." Sales Finance companies fall under the definition of "financial enterprises" as "any person under the jurisdiction of the department other than a financial institution."

Sales Finance licensees who are authorized to make Secondary Motor Vehicle Finance Transaction loans are under the jurisdiction of the "administrator" defined as "the deputy director of the financial institutions division of the department of insurance and financial institutions." (A.R.S. §44-281(1). "A person shall not engage in the business of a sales finance company in this state without a sales finance company license as provided by this article." A.R.S. §44-282(A).

The records provision of law that applies to Sales Finance licensees is A.R.S. §6-129.01 which states "Enterprise documents open to public inspection. All papers, documents, reports and other written instruments filed with the deputy director pursuant to the requirements of this title by an enterprise shall be open to public inspection, except that the deputy director may withhold from public inspection for such time as the deputy director considers necessary any information which in the deputy director's judgment the public welfare or the welfare of the financial enterprise requires to be so withheld."

My public records request of July 26, 2022 (enclosed) did not ask for confidential company records. I requested the roster of Sales Finance licensees which DIFI provided. I asked for

consumer complaints regarding Secondary Motor Vehicle Finance Transaction Loans or lenders for the last five years. I asked for everything DIFI has put in writing about what it takes for a loan to qualify as a Secondary Motor Vehicle Finance Transaction loan. None of this information meets the statutory requirement for withholding information based on the public welfare. In fact, disclosure furthers the public welfare.

It is in the public interest for the Department of Insurance and Financial Institutions to provide clear guidance to both the industry and to consumers about which cash loans "secured" by the borrower's vehicle can be made under Title 44, Chap. 2.1 at rates up to 204% APR and which must be made under terms of the Consumer Lender law at Title 6, Chapter 5 with a rate cap of 36% annual interest plus a 5% fee. Must borrowers hold a clear title to the vehicle used to secure the SMVFT loan? Does the Department hold that a loan can be secured by an encumbered vehicle? Guidance on these issues provided by DFI/DIFI is what is being requested.

Lenders and consumers have the right to know if it is legally permissible for a licensed Sales Finance company to make loans secured by the borrower's check or by electronic access to the borrower's bank account, despite the 2010 expiration of the Deferred Presentment law that authorized loans to be "secured" by the borrower's check and the defeat of Prop200 in 2008 which would have expanded the definition of "check" as security in the Deferred Presentment law to include electronic fund transfers.

Please reconsider your denial of my public records request. Thank you for your prompt attention to this matter. If you have any questions, please contact me.

Sincerely,

Jean Ann Fox

928-775-4729

jafox1833@gmail.com

Part V: DIFI response on September 14, 2022 to CEI letter of August 8, 2022

----- Forwarded message -----

From: **Gio Espinosa** <gio.espinosa@difi.az.gov>
Date: Wed, Sep 14, 2022 at 11:33 AM
Subject: Re: CEI public records request status update
To: Jean Fox <jafox1833@gmail.com>
Cc: Kelly Griffith <kelly@economicintegrity.org>

Good morning Ms. Fox,

First, my apologies for the delay. We have attended conferences recently and I have also taken some summer leave time as well.

I wanted to thank you for your response.

You are correct that Enterprise entities, as defined under ARS 6-101, have a carve out under of ARS 6-129. However, Enterprise is not entirely left out of ARS 6-129, (B)and (C) includes enterprise(s) in the examples of when records and information may be disclosed. ARS 6-129.01 expands the public disclosure of documents for Enterprise(s). However, the permissive disclosure is very narrow and limited to "all papers, documents, reports and other written instruments filed with the deputy director..." Therefore, I would be happy to address any additional request you may have and that falls under the purview of ARS 6-129.01.

6-129. Records; disclosure and limitations on disclosure; evidentiary effect

A. Except as otherwise provided by this title, the records of the department relating to financial institutions are not public documents, are not open for inspection by the public and the director and any member of the director's staff may not disclose any information obtained in the discharge of official duties to any person not connected with the department.

B. Records and information may be disclosed as follows:

1. To representatives of federal agencies insuring accounts in the financial institution.

2. To representatives of state or federal agencies and foreign countries having regulatory or supervisory authority over the activities of the financial institution or enterprise or similar financial institutions or enterprises if such representatives are permitted to and do, on request of the director, disclose similar information respecting those financial institutions or enterprises under their regulation or supervision or to such representatives who state in writing under oath that they shall maintain the confidentiality of such information.

4. To a select committee of the legislature of this state appointed for the purpose of inspecting such records, but this paragraph does not permit disclosure of information as to the condition of any particular financial institution or enterprise, or disclosure of information as to any particular transaction or transactions of a financial institution or enterprise, or disclosure of information that has been disclosed to a financial institution or enterprise by or on behalf of any person in connection with a transaction or proposed transaction with such financial institution or enterprise.

C. The director may:

5. Disclose to the financial institution or enterprise or its holding company the results of any examination, inquiry or investigation by the department regarding that financial institution or enterprise.

6. Disclose to the financial institution or enterprise any complaint made concerning that financial institution or enterprise.

7. Disclose to any person who complains to the department concerning any financial institution or enterprise the result of any investigation concerning the complaint.

E. Disclosure of the results of any examination, inquiry or investigation disclosed to the financial institution or enterprise pursuant to subsection C, paragraph 5 of this section or disclosure of any complaint to the financial institution or enterprise pursuant to subsection C, paragraph 6 of this section does not make that information a public record, and the financial institution or enterprise or its holding company may not disclose any of the information to the general public. Under no circumstances shall any of the comments, conclusions or results of an examination, inquiry or investigation disclosed pursuant to subsection C, paragraph 5 of this section be used or referenced in any form by a financial institution, enterprise or holding company in any type of communication to a customer or potential customer.

6-101. Definitions

9. "Enterprise" means any person under the jurisdiction of the department other than a financial institution.

Thus under ARS 6-129.01 relevant to Enterprise documents open to public inspection

6-129.01. Enterprise documents open to public inspection

All papers, documents, reports and other written instruments filed with the deputy director pursuant to the requirements of this title by an enterprise shall be open to public inspection, except that the deputy director may withhold from public inspection for such time as the deputy director considers necessary any information which in the deputy director's judgment the public welfare or the welfare of the financial enterprise requires to be so withheld.

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