



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 25, 1996

Mr. Ridgely C. Bennett
Staff Attorney
Texas Lottery Commission
P.O. Box 16630
Austin, Texas 78761-6630

OR96-2211

Dear Mr. Bennett:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 31058.

The Texas Lottery Commission (the "commission") received a request for the "name or names, addresses, telephone numbers and other information in [the commission's] possession of the person or persons who have filed a claim with [the commission] for the Nov. 23, 1994," lotto drawing. The commission asserts that the requested information is excepted from required public disclosure under sections 552.101 and 552.108 of the Government Code.

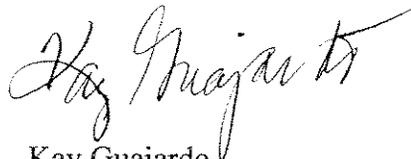
Section 552.108 of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution. Gov't Code § 552.108; *see Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). Where an incident involving allegedly criminal conduct is still under active investigation or prosecution, any proper custodian of information which relates to the incident may invoke section 552.108. Open Records Decision Nos. 474 (1987), 372 (1983). The Texas Supreme Court has recently concluded that section 552.108 applies to a district attorney's closed prosecution files. *See id.*

You inform us that the commission's security division is investigating the validity of a claim filed for the November 23, 1994, Lotto Texas drawing. You submitted various documents which you believe demonstrate that the commission's security division is a

law enforcement agency. Because the validity of the claim for the November 23, 1994, lotto drawing is under investigation and it is a crime to fraudulently claim a lottery prize, Gov't Code § 466.308, the commission may withhold the requested information under Government Code section 552.108.¹

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

Ref.: ID# 31058

cc: Mr. George Kuempel
Dallas Morning News
P.O. Box 655237
Dallas, Texas 75267

¹We note that the street address and telephone number of a prize winner is confidential and may not be released pursuant to an open records request unless the prize winner has consented to such a release. Gov't Code § 466.022(3). We do not address in this letter what effect, if any, that Government Code section 467.104 might have on the exceptions in chapter 552 of the Government Code. We strongly recommend that you seek legislative guidance on this issue.