



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 19, 1997

Ms. Kimberly Kiplin
Interim Executive Director
Texas Lottery Commission
P.O. Box 16630
Austin, Texas 78761

OR97-0395

Dear Ms. Kiplin:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 27934.

The Texas Lottery Commission (the "commission") received an open records request for all records pertaining to the commission's criminal prosecution of certain named individuals. You contend the requested information is excepted from required public disclosure under sections 552.101 and 552.108 of the Government Code.

Because section 552.108 is the more inclusive exception, we will discuss the applicability of this exception first. Section 552.108 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). Because the commission has statutory authority to maintain a department of security staffed by commissioned peace officers or investigators, Gov't Code § 466.020, and authority to enforce violations of the lottery law, *id.* § 466.019, the commission may properly raise section 552.108 of the Government Code on its own behalf. *See* Open Records Letter No. 96-2206 (1996).

Because the records at issue come within the purview of section 552.108, we conclude that most of the information at issue may be withheld under this section. We note, however, that information normally found on the front page of an offense report is generally considered public. *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Thus, the commission must release, from both its own records as well as from records the commission maintains from other law enforcement agencies, the types of information that are considered to be front page offense report information. For your convenience, we have attached a summary of Open Records Decision No. 127 (1976), listing the specific types of information that must be released in accordance with *Houston Chronicle, supra*.¹ Although section 552.108 authorizes the commission to withhold the remaining information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law.² See Gov't Code § 552.007.

We are resolving this matter with an 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 should 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 Hamilton Guajardo
Assistant Attorney General
Open Records Division

¹We note that one of the commission's investigation reports contains a reference to a search warrant that was executed during the course of the investigation. Although the records you submitted to this office do not contain a search warrant affidavit, we note that such affidavits are specifically made public under article 18.01 of the Code of Criminal Procedure. Accordingly, to the extent that the commission possesses a copy of the affidavit, it must be released to the requestor.

²In this regard, we note that although you contend that some of the information at issue is made confidential by federal statutes, 26 U.S.C. § 6103 and 42 U.S.C. § 450(c), we could identify no such information in the records submitted to this office. Additionally, although you also contend that some of the requested information may be confidential under the federal Privacy Act, you have not explained how the Privacy Act governs records held by the commission. See 5 U.S.C. §§ 552a(a)(1), 552(f). We agree, however, that criminal history record information obtained from the TCIC and NCIC are specifically made confidential by statute. See *generally* Open Records Decision No. 565 (1990) and authorities cited therein.

KHG/RWP/rho

Ref.: ID# 27934

Enclosures: Summary of Open Records Decision No. 127 (1976)
Submitted documents

cc: Mr. William Rozen
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(w/o submitted documents)

