



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 16, 1997

Ms. Kimberly L. Kiplin
Acting Executive Director
Texas Lottery Commission
P.O. Box 16630
Austin, Texas 78761-6630

OR97-1406

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# 105648.

The Lottery Commission received several requests for information held by the commission relating to the termination of consulting contracts between GTECH Corporation ("GTECH") and Ben Barnes and Ricky Knox. You have submitted a responsive document (the "agreement") to this office for review. You do not raise any exceptions to required public disclosure, but you have declined to release the responsive information for the purpose of requesting an attorney general decision under section 552.305(a) of the Government Code.

Pursuant to section 552.305, we notified all interested parties to give them the opportunity to explain whether the requested information should be released. See Gov't Code § 552.305; Open Records Decision No. 542 (1990). GTECH responded to our notification by asserting that the requested information is protected under sections 552.102, 552.104, and 552.110 of the Government Code. Counsel for Mr. Barnes and Mr. Knox contends that the agreement constitutes "personal financial information," and thus, must be withheld on the basis of common-law privacy under section 552.101 of the Government Code.

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses common-law privacy. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section 552.102 excepts information in personnel files only if it meets the test under section 552.101 for common-law invasion of privacy. *Hubert v. Harte-Hanks Tex. Newspapers*, 652

S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Common-law privacy protects information if it is highly intimate or embarrassing, and it is of no legitimate concern to the public. *Industrial Found.*, 540 S.W.2d at 683-85 (Tex. 1976). This office has previously concluded that financial information ordinarily satisfies the first requirement of common-law privacy in that it constitutes highly intimate or embarrassing facts about the individual. See Open Records Decision No. 373 (1983). Whether the public has a legitimate interest in such information, however, must be determined on a case-by-case basis. Open Records Decision No. 626 (1994) at 3. We have reviewed the agreement and arguments for withholding the agreement made on behalf of Mr. Barnes and Mr. Knox. We conclude that, in this instance, the agreement may not be withheld under sections 552.101 or 552.102.

GTECH and counsel for Mr. Barnes and Mr. Knox asserts that the agreement is excepted from required public disclosure pursuant to section 552.110 of the Government Code. Section 552.110 excepts from disclosure two types of information: (1) trade secrets, and (2) commercial or financial information that is obtained from a person and made privileged or confidential by statute or judicial decision. See Open Records Decision Nos. 639 (1996) (commercial or financial information); 552 (1990) (trade secret). We have considered those arguments and conclude that the agreement does not constitute trade secrets or commercial or financial information the release of which will cause substantial harm to the competitive position of GTECH, Mr. Barnes, or Mr. Knox. Therefore, the requested information is not excepted from disclosure under section 552.110.

Lastly, we address GTECH's argument that section 552.104 excepts the agreement from required public disclosure. Section 552.104 excepts information that, if released, would give advantage to a competitor or bidder. The purpose of this exception is to protect the interests of a governmental body in competitive bidding situations. See Open Records Decision No. 592 (1991). Section 552.104 is not designed to protect the interests of private parties that submit information to a governmental body. *Id.* at 8-9. Therefore, this exception will not protect the requested information from disclosure.

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,



Sandra L. Coaxum, C.P.A.
Chief, Open Records Division

Ref.: ID# 105648

Enclosures: Submitted documents

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