



Office of the Attorney General
State of Texas

January 5, 1998

DAN MORALES
ATTORNEY GENERAL

Ms. Linda Cloud
Deputy Executive Director
Texas Lottery Commission
P.O. Box 16630
Austin, Texas 78761-6630

OR98-0008

Dear Ms. Cloud:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 111749.

The Texas Lottery Commission (the "commission") received a request for three types of information concerning the 1997 North American Association of State and Provincial Lotteries Conference. The requestor specifically seeks:

1. Instructions to any potential vendors directing that particular restrictions be observed. Please refer to the enclosed letter to Mr. Michael R. Chambrello of GTECH Corp. If similar letters, or documents on this topic, were sent to any other potential vendors (on the procurement referred to in the Chambrello letter, or any other procurement), we request copies.
2. Instructions to TLC employees regarding their conduct at the conference.
3. Reports, or descriptions in any form, of the activities of TLC employees at the conference.

You explain that you have provided some of the requested information to the requestor. You claim, however, that five documents, labeled Exhibits B-E, are excepted from required public disclosure by sections 552.101, 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

Section 552.103(a) excepts from disclosure information:

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and
- (2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

The commission has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The commission must meet both prongs of this test for information to be excepted under 552.103(a).

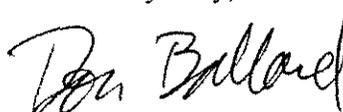
In this instance, you state that the commission is currently a party in litigation with one of its contractors. *GTECH Corp. v. Texas Lottery Comm'n*, (Dist. Ct., Travis County, Tex., Nov. 7, 1997). By letter dated November 10, 1997, you have provided this office with a copy of the Original Petition in that case. See Open Records Decision No. 638 (1996) (governmental body must inform attorney general concerning changed circumstances in litigation). You also informed this office with this letter that you seek to withhold another document, Exhibit F, from disclosure. You state that the commission only recently located this responsive document. You explain that the subject of the current litigation and the subject of this request for information are the same. After reviewing the submitted materials and your arguments, we conclude that you have shown that litigation is pending and that the requested documents relate to the litigation. You may withhold Exhibits B-F under section 552.103.

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Because we make a determination under section 552.103, we need not consider your other arguments against 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,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref: ID# 111749

Enclosures: Submitted documents

cc: Mr. William A. Zeis
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(w/o enclosures)