



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 21, 1998

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

OR98-0197

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# 112238.

The Texas Lottery Commission (the "commission") received a request for the following information: the gross monthly pay, the date of employment, and the effective date of termination of Marketing Director Don Rogers and Information Systems Director Rodney McDonald; the reason for Mr. Rogers' termination; the original draft report on lottery sales; and a writing showing that the liquidated damages against GTECH had been collected. You state that some of the requested information has been provided to the requestor. You claim, however, that the two documents which are the original drafts of the lottery sales report are excepted from required public disclosure by sections 552.103 and 552.111 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

In Open Records Decision 559 (1990), this office concluded that a preliminary draft of a document that is intended for public release in a final form necessarily represents the advice, opinion, and recommendation of the drafter as to the form and content of the final document and as such could be withheld pursuant to the statutory predecessor to section 552.111. However, subsequent to issuance of Open Records Decision No. 559 (1990), this office determined that section 552.111 excepts only advice, opinion, or recommendation intended for use in a governmental entity's policy-making processes.

[T]o come within the [section 552.111] exception, information must be related to the *policymaking* functions of the governmental body. An agency's policymaking functions do not encompass routine internal administrative and personnel matters [Emphasis in original.]

Open Records Decision No. 615 (1993) at 5. Consequently, in the wake of Open Records Decision No. 615 (1993), section 552.111 now excepts draft documents only to the extent that the draft documents pertain to the policymaking function of the governmental body. You explain that the requested documents "are earlier drafts of a presentation given by Mr. James Rinn, an agency official to the Commissioners during an open meeting." The final product as was presented to the Commission, you state, has been made available to the requestor. After examining the submitted material, we find that the commission may withhold the requested drafts under section 552.111.

Because we make a determination under section 552.111, we do not address your argument under section 552.103 at this time. 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# 112238

Enclosures: Submitted documents

cc: Mr. R. G. Ratcliffe
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(w/o enclosures)