



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 6, 1998

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

OR98-0385

Dear Ms. Cloud:

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# 112340.

The Texas Lottery Commission (the "commission") received a request for information involving:

...

(2) A job description of the Texas Lottery Commission ("TLC") Executive Director, and any other staff, consultants, or outside contractors who are or might be involved in the development or implementation of the August 12, 1997 Request for Proposals for Lottery Operations and Services ("RFP"). Current and all earlier versions of the job descriptions are requested.

(3) Any documents or information of any type describing particular responsibilities of individuals or groups regarding the development or implementation of the RFP, or assigning responsibilities to individuals or groups regarding the development or implementation of the RFP, including without limitation:

(a) Any documents or information of any kind describing the role of Lawrence Littwin in the development or implementation of the RFP, including which employees, consultants, or contractors report or reported to him. Both current and any previous versions are requested.

(b) Any documents or information of any kind describing the role of the Executive Director in the development or implementation of the RFP, including which employees, consultants, or contractors report or reported to her. Both current and any previous versions are requested.

(c) Any documents or information of any kind describing any change in the role of Lawrence Littwin or the Executive Director in the development or implementation of the RFP.

(4) Any documents or information listing or describing any person who drafted all or part of the RFP, who commented on the RFP as it was being drafted, or who received copies of any draft of the RFP.

(5) Any documents or information describing meetings in which the development and/or implementation of the RFP was discussed, including without limitation, lists of attendees and meeting notes of any participant.

You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.104, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information as contained within "Exhibits B through I."

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. The governmental body 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 governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

In this instance, you explain that the commission is currently involved in pending litigation, *GTECH Corporation v. Texas Lottery Commission*, filed in the Travis County District Clerk's Office on November 7, 1997. You have provided this office with a copy of the petition in that case. After reviewing the submitted materials, we conclude that litigation is pending and that the requested information relates to the litigation. The commission may, therefore, withhold the requested information from disclosure.

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 pending litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. In addition, 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).

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/alg

Ref.: ID# 112340

Enclosures: Submitted documents

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