



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 9, 1998

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

OR98-0931

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# 113764.

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

[A]ll documents that document the various problems regarding the Information Systems Division during my tenure. This includes, but is not limited to, memos, letters, electronic mail messages, interviews, interview questions, surveys and their results, and audit results that document the ineffectiveness of the information systems division. . . . I would like all documents that show deficiencies regarding the effectiveness of the Information Systems division and my role as division director. . . .

You assert that the information is excepted from disclosure pursuant to sections 552.101, 552.107, 552.110, 552.111 and 552.116 of the Government Code. You have submitted information responsive to the request. We have considered your arguments and have reviewed the information submitted.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. We note that section 466.022 of the Government Code (the Lottery Act) provides:

(a) Except as otherwise provided by law, all commission records are subject to public inspection in accordance with Chapter 552.

(b) In addition to commission records excepted from disclosure under Chapter 552, the following information is confidential and is exempt from disclosure:

(1) security plans and procedures of the commission designed to ensure the integrity and security of the operation of the lottery;

(2) information of a nature that is designed to ensure the integrity and security of the selection of winning tickets for numbers in the lottery, other than information describing the general procedures for selecting winning tickets or numbers; and

(3) the street address and telephone number of a prize winner, if the prize winner has not consented to the release of the information.

You have submitted various marked portions of documents which you contend involve computer and information systems information that is related to the operation of the commission. You assert that the marked information represents the portions of the security plans and procedures that are designed to ensure the integrity and security of the operation of the lottery. Additionally, you relate that the commission's internal auditor has reviewed the marked portions of the exhibits and agrees that the information if disclosed, would threaten the integrity and security of the lottery. Consequently, you may withhold the marked portions of Exhibits B1 through B20 under section 552.101 in conjunction with section 466.022 of the Government Code.

Section 552.110 protects the property interests of private persons by excepting from disclosure two types of information: (1) trade secrets and (2) commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts. *Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex.), *cert. denied*, 358 U.S. 898 (1958); *see also* Open Records Decision No. 552 (1990) at 2. Since the property and privacy rights of third parties may be implicated by the release of the requested information, this office notified Science Applications Information Corporation ("SAIC") about the request. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Government Code section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Open Records Act in certain circumstances). SAIC did not respond to our notification by raising any exception to disclosure. Consequently, it

has not established that the information is protected under section 552.110. See Open Records Decision Nos. 639 (1996) at 4 (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure), 552 (1990) at 5 (party must establish prima facie case that information is trade secret), 542 (1990) at 3. Accordingly, the portions of Exhibits B1 through B20 not excepted under Government Code section 466.022, must be released to the requestor.

Next, we observe you also raise section 552.107 for Exhibits C1 through C9. We note that Section 552.107(1) excepts information from disclosure if:

it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct.

Gov't Code § 552.107(1). In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. *Id.* at 5. We have reviewed the documents submitted under Exhibits C1 through C9 and agree the documents may be withheld under section 552.107.

Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 (1993) at 5-6. In addition, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* at 4-5.

We note that the section 552.111 markings submitted for Exhibits B1 through B20 are marked as coextensive with section 552.101, and as such, those portions are addressed under section 552.101. However, we have reviewed the document submitted under Exhibit F which appears to encompass both a personnel and policy matter. Consequently, we have marked the information the commission may withhold pursuant to section 552.111; the remaining portion must be released.

The Seventy-fifth Legislature amended section 552.116 of the Government Code to read as follows:

EXCEPTION: AUDIT WORKING PAPERS. An audit working paper or draft audit report of the state auditor or of another state agency or institution of higher education as defined by Section 61.003, Education Code, is excepted from the requirements of Section 552.021.

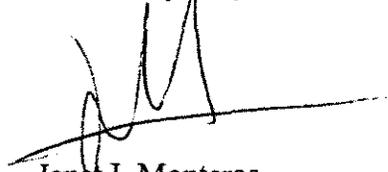
Additionally the Seventy-fifth Legislature amended the definition contained within section 321.001 of the Government Code to include a definition of an audit working paper which reads as follows:

(1) "Audit working paper" means all documentary and other information prepared or maintained in conducting an audit or investigation, including all intra-agency and interagency communications relating to an audit or investigation and all draft reports or portions thereof. . . .

See Gov't Code § 321.001(1). Accordingly, as you represent that the documents submitted under Exhibit D1 through D5 and Exhibit E1 comprise the audit working papers and draft reports of the commission's internal auditor, as well as information generated under the direction and control of the Internal Auditor for the commission, all of which involves an ongoing audit of the commission Information Systems Division, we conclude that the documents at issue in the instant case are being maintained in conducting an audit or investigation and are excepted from disclosure under section 552.116 of the Government Code.

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,



Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/alg

Ref.: ID# 113764

Enclosures: Submitted documents

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