



March 18, 1999

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

OR99-0767

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# 122821.

The Texas Lottery Commission (the "commission") received requests for the names and hometowns of members of the BBB Revocable Trust and the amount of winnings that each member receives. The BBB Revocable Trust won the Lotto Texas jackpot on October 21, 1998, and therefore, the commission has documents regarding the BBB Revocable Trust. On behalf of Mr. Kenneth McLaughlin, an attorney representing the BBB Revocable Trust, you ask whether the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 466.022 of the Government Code and constitutional or common-law privacy. *See Gov't Code § 552.305(a)* (when person's privacy interest may be involved, governmental body may decline to release information for purpose of requesting attorney general decision), *(b)* (person whose privacy interest may be involved may submit in writing reasons why information should be withheld). We have considered the exception you claim and have reviewed the documents at issue.

Section 466.022 of the Government Code provides that all commission records are subject to public inspection in accordance with the Open Records Act (the "act"); however, section 466.022 makes the street address and telephone number of a prize winner confidential if the prize winner has not consented to the release of the information. First, counsel for the trust, Mr. McLaughlin, does not object to the release of the names and hometowns of the claimant, the BBB Revocable Trust, and the trustee which are contained in the Texas Lottery Winner

Claim Form submitted by the trust. However, Mr. McLaughlin asserts that all other requested information, which is contained in the Trust Agreement that you submitted as responsive to the request, is not subject to the act because it is not “public information” under section 552.002 of the Government Code. “Public information” is information that is collected assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body. Gov’t Code § 552.002. The claim form and Trust Agreement are collected and maintained by the commission in connection with its official business in awarding lottery winnings; therefore, the information is “public information” under the act.

Mr. McLaughlin contends that the names and hometowns of the trustor and the beneficiaries and the amount of lottery winnings each receives should be withheld. Mr. McLaughlin’s arguments demonstrate that the trustor is the prize winner. Thus, pursuant to section 466.022 of the Government Code, the numeric street address and telephone number of the trustor are confidential because he has not consented to the release of this information. A prize winner’s hometown is not part of his street address, and therefore, this individual’s hometown is not confidential pursuant to section 466.022.

We now consider whether the other requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with the constitutional or common-law right to privacy. Section 552.101 excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.101 also encompasses the doctrines of constitutional and common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683.

Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual’s interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual’s autonomy within “zones of privacy” which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual’s privacy interests and the public’s need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the “most intimate aspects of human affairs.” *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

This office has found that the following types of information are excepted from required public disclosure under constitutional or common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987), and identities of victims of sexual abuse or the detailed description of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982).

The name and hometown of the trustor, who is the prize winner, are not the types of information that are protected by the constitutional or common-law rights to privacy. Therefore, we conclude that this information is not excepted from disclosure under section 552.101 and must be released. However, as for the Trust Agreement, which contains information regarding the beneficiaries of the trust and the disposition of the trust, such information reflects the trustor's personal financial decision that does not involve a financial transaction between him and a governmental body. Accordingly, the Trust Agreement is private information that is excepted from public disclosure under section 552.101.

In summary, you must release the name and hometown of the trustor. You must withhold the remaining information as it is made confidential by section 466.022 of the Government Code and is private information protected from disclosure under section 552.101.

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 any questions about this ruling, please contact our office.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/ch

Ref: ID# 122821

Enclosures: Submitted documents

cc: Mr. Andy Adams
City Editor
The Lufkin Daily News
P.O. Box 1089
Lufkin, Texas 75902-1089
(w/o enclosures)

Mr. Wasim Hussain
Assistant Director of Research
Woodbridge Sterling Capital, L.L.C.
230 Park Avenue, Suite 360
New York, New York 10169
(w/o enclosures)

Mr. Kenneth McLaughlin
Porter & Hedges, L.L.P.
P.O. Box 4744
Houston, Texas 77210-4744
(w/o enclosures)