



April 10, 2001

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

OR2001-1436

Dear Ms. Cloud:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 145796.

The Texas Lottery Commission (the "commission") received a request for "any and all new information" contained in commission files, since November 29, 2000 through the date of the request, concerning GameTech International, Inc., Trend Gaming Systems, L.L.C., and TGC Holdings, Inc. The request also seeks, for the same period, "any and all new documents" related to any enforcement action initiated and completed against Trend Gaming Systems, L.L.C. Initially, you indicated to this office that the third parties whose interests are at issue have asserted privacy and proprietary interests in the information contained in the submitted exhibits C, D, and E. You have since advised this office that the third parties have withdrawn their assertions with respect to exhibits C and D and that this information has been released to the requestor.

As to exhibit E, however, you state that this information may be excepted from disclosure under sections 552.101 and 552.110 of the Government Code. The commission has made no arguments in support of these exceptions, but has notified the attorney for the third party whose interests are at issue, Trend Gaming Systems, L.L.C., of the request by a letter dated February 5, 2001, in compliance with section 552.305 of the Government Code. *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 Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Act in certain circumstances). We have considered the asserted exceptions and reviewed the submitted information.

Neither Trend Gaming Systems, L.L.C. or its attorney responded to the notice. We find no information in exhibit E that the commission must withhold under section 552.101 in conjunction with a right of privacy. As to section 552.110, absent arguments from the third party, we have no basis to conclude that the information in exhibit E is excepted from disclosure. *See* Gov't Code § 552.110(b) (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); Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). The information in exhibit E must therefore be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

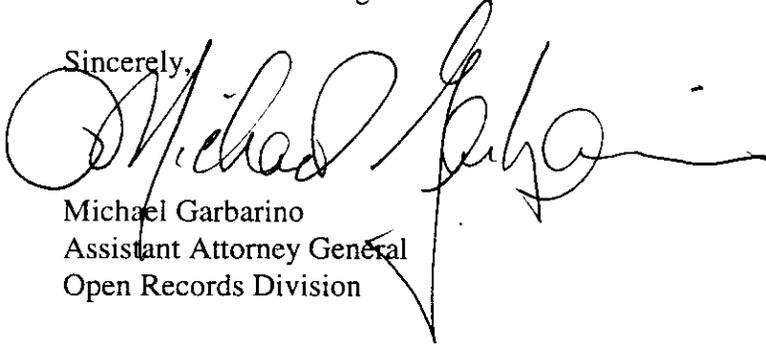
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Garbarino". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Michael Garbarino  
Assistant Attorney General  
Open Records Division

MG/seg

Ref: ID# 145796

Encl. Submitted documents

cc: Mr. Stephen Fenoglio  
3660 Stone Ridge Road, Suite B-102  
Austin, Texas 78746-7759