



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

May 29, 2003

Mr. Reagan Greer
Executive Director
Texas Lottery Commission
P.O. Box 16630
Austin, Texas 78761-6630

OR2003-3628

Dear Mr. Greer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 181829.

The Texas Lottery Commission (the "commission") received a request for "[a] copy of all address pages from the Franklin Planner that was in [the requestor's] possession during [his] recent term of employment" with the commission. You state that the requestor subsequently modified his request to exclude the home phone numbers of past and present commission employees. Accordingly, this ruling does not address that information. You claim that the submitted information is excepted from disclosure under sections 552.117, 552.136, and 552.137 of the Government Code.¹ We have considered the exceptions you claim and have reviewed the submitted information.

Section 552.117(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(1). However, information that is responsive to a request may not be withheld from disclosure under section 552.117(1) if the employee did not request confidentiality in accordance with section 552.024 or if the request for confidentiality under section 552.024 was not made until after the request for information at issue was received by the governmental body. Whether

¹We note that section 552.136 is identical to section 552.137.

a particular piece of information is public must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Accordingly, we conclude that the commission must withhold from disclosure the information you have marked pursuant to section 552.117(1), if the individuals at issue are current or former officials or employees of a governmental body and have made timely requests for confidentiality under section 552.024 of the Government Code for this information. Otherwise, this information may not be withheld on the basis of section 552.117(1).

You next assert that portions of the remaining submitted information are excepted from disclosure based on section 552.137. Section 552.137 requires the commission to withhold e-mail addresses of members of the public that are provided for the purpose of communicating electronically with a governmental body, unless the members of the public have affirmatively consented to their release. As you state that there has been no affirmative consent to disclosure from the members of the public at issue, the commission must withhold from the requestor the e-mail addresses of members of the public in the submitted information that you have marked pursuant to section 552.137 of the Government Code, except where we have noted otherwise. Section 552.137 does not apply to a government employee's work e-mail address, the general e-mail address of a business, nor to a web site or web page.

In summary, the information that you have marked must be withheld under section 552.117(1) if the individuals at issue are current or former employees of a governmental body who have made timely elections under section 552.024 to keep their information confidential. The e-mail addresses of members of the public that you have marked are excepted from disclosure under section 552.137, except where noted. The remaining submitted information must 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 Dep't of Pub. 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/jh

Ref: ID# 181829

Enc: Submitted documents

c: Mr. Keith Elkins
P.O. Box 1237
Austin, Texas 78767
(w/o enclosures)