



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

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

OR2003-5589

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# 185831.

The Texas Lottery Commission (the "commission") received a request for four categories of information related to the Ipsos-Reid player research report and letter received by the commission "regarding the newly adopted Lotto Texas rule change." You state that some responsive information has been made available to the requestor. You claim that the requested player research questionnaires are excepted from disclosure under section 552.101 of the Government Code. You also claim that the requested questionnaires may be excepted from disclosure under section 552.110 of the Government Code but make no arguments and take no position as to whether the submitted information is so excepted. In addition, you have notified Ipsos-Reid of the request and of its opportunity to submit comments to this office. *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 section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have considered all claimed exceptions and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

As a threshold issue, we must first address Ipsos-Reid's contention that the requested information is not subject to the provisions of the Public Information Act (the "Act"). Section 552.002(a) of the Government Code defines the meaning of "public information" as follows:

In this chapter, "public information" means information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

The Act does not ordinarily require a governmental body to obtain information that is not in its possession. Open Records Decision Nos. 445 (1986), 317 (1982). However, information that is collected, assembled, or maintained by a third party may be subject to disclosure under chapter 552 of the Government Code if a governmental body owns or has a right of access to the information. See Open Records Decision No. 462 (1987). Where a third party has prepared information on behalf of a governmental body, the information is subject to the Act, even though it is not in the governmental body's custody. Open Records Decision No. 558 (1990).

Ipsos-Reid contends that the requested information is not subject to the Act because the information is not held by or for the commission. Ipsos Reid explains:

The questionnaires were designed by Ipsos-Reid and were used to collect information from individual respondents about each respondent's personal background, previous participation in lottery games and opinions about various existing and proposed lottery games. . . . The completed questionnaires were never provided to [the commission] before this request was made

While the information contained in the completed questionnaires was collected by Ipsos-Reid so it could perform market research services for [the commission] . . . the questionnaires themselves were not collected to be delivered to [the commission]. Rather, the information from the questionnaires was compiled and analyzed by Ipsos-Reid and the product of that analysis was provided to [the commission]. . . . The data contained in the surveys was analyzed and tabulated by Ipsos-Reid and presented to [the commission] in a specified "cross tabulation" format . . . [which] was the "product" Ipsos-Reid prepared for and delivered to [the commission].

After careful review of Ipsos-Reid's representations and the submitted information, we find that the information at issue was not collected, assembled, or maintained in connection with the transaction of official business by or for the commission for the purposes of section 552.002(a)(2). See Open Records Decision No. 558 (1990) (information must be prepared for governmental body). Consequently, we conclude that the requested questionnaires do not constitute "public information" under section 552.002(a)(2) of the Government Code, and thus, the commission is not required to make the records available to the requestor. As we are able to make this determination, we do not address the claimed exceptions under sections 552.101 and 552.110 of the Government Code.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/seg

Ref: ID# 185831

Enc. Submitted documents

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