



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 24, 2005

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

OR2005-04508

Dear Mr. Greer:

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# 224805.

The Texas Lottery Commission (the "commission") received a request for information related to a Mega Millions win and the game Money, Money, Money. You state that you have released some of the information to the requestor, but you claim that the submitted information is excepted from disclosure under sections 552.101, 552.111, and 552.139 of the Government Code. We have considered the exceptions you claim 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).

We first address your argument under section 552.111 of the Government Code. Section 552.111 provides that "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency is excepted from [required public disclosure]." This section encompasses the deliberative process privilege. *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152, 158 (Tex. App.—Austin 2001, no pet.). The deliberative process privilege, as incorporated into the Act by section 552.111, protects from disclosure interagency and intra-agency communications consisting of advice, opinion, or recommendations on policymaking matters of a governmental body. See *id.* at 158-160; Open Records Decision No. 615 at 5 (1993). An agency's policymaking functions 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. ORD 615 at 5-6.

The preliminary draft of a policymaking document that has been released or is intended for release in final form is excepted from disclosure in its entirety under section 552.111 because such a draft necessarily represents the advice, recommendations, or opinions of the drafter as to the form and content of the final document. Open Records Decision No. 559 at 2 (1990). Generally, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Arlington Indep. Sch. Dist.*, 37 S.W.3d at 158-161; ORD 615 at 4-5. Yet, where a document is a genuine preliminary draft that has been released or is intended for release in final form, factual information in that draft that also appears in a released or releasable final version is excepted from disclosure by section 552.111. Open Records Decision No. 559 (1990). However, severable factual information appearing in the draft but not in the final version is not excepted from disclosure by section 552.111. *Id.* We have marked the information that you may withhold under section 552.111. The remaining information may not be withheld under section 552.111.

We will next consider your arguments under sections 552.101 and 552.139 of the Government Code for the remaining information you seek to withhold under these exceptions. You claim that some of the submitted information is excepted from public disclosure under section 552.101 of the Government Code, which protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information protected by other statutes. Section 466.022(b) of the Government Code provides that the following information is confidential and exempt from disclosure:

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

Gov’t Code § 466.022(b)(1)-(2). You state that release of the information at issue would “compromise the lottery games and threaten the integrity and security of the lottery.” You further state that this information “reveals information designed to ensure against any impropriety or thwarting of security plans and procedures in the operation of the lottery and selection of winning tickets or numbers.” Based on your representations and our review of the information at issue, we conclude that the remaining submitted information you seek to withhold under section 466.022 of the Government Code is confidential under this statute.

Therefore, the commission must withhold this information, which we have marked, under section 552.101 of the Government Code.<sup>1</sup>

In summary, we have marked the information that may be withheld under section 552.111. We have marked the information that must be withheld under section 552.101 in conjunction with section 466.022. The remaining 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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

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<sup>1</sup>As we are able to make this determination, we need not address your argument under section 552.139 of the Government Code.

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,



Elizabeth A. Stephens  
Assistant Attorney General  
Open Records Division

EAS/krl

Ref: ID#224805

Enc. Submitted documents

c: Ms. Dawn Nettles  
Lotto Report  
P. O. Box 495033  
Garland, TX 75049-5033  
(w/o enclosures)