



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 22, 2005

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

OR2005-05533

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# 226708.

The Texas Lottery Commission (the "commission") received a request for the July 2004 SAS 70 audit of GTECH Corporation ("GTECH") performed by Deloitte & Touche, L.L.P. ("Deloitte"). You claim that the requested information is excepted from disclosure under sections 552.101, 552.111, and 552.139 of the Government Code. In addition, you also claim that the request may implicate the proprietary interests of third parties GTECH and Deloitte. Accordingly, you notified GTECH and Deloitte of the request and of each company's right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); *see also* 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 under the Act in certain circumstances). GTECH, in its response to the notice, claims that the requested information is excepted from disclosure under sections 552.101, 552.111, and 552.139 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note that the submitted information is subject to required public disclosure under section 552.022 of the Government Code, which provides in relevant part:

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information consists of a completed audit made for the commission. Therefore, as prescribed by section 552.022, you must release the submitted information unless it is confidential under other law. Section 552.111 of the Government Code is a discretionary exception under the Act and does not constitute "other law" for purposes of section 552.022. *See* Open Records Decision No. 663 (1999) (governmental body may waive section 552.111); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general). Accordingly, the commission may not withhold any of the submitted information under section 552.111. However, because sections 552.101, 552.110, and 552.139 are "other laws" for purposes of section 552.022, we will address the respective claims of the commission and GTECH regarding those exceptions.

Section 552.101 of the Government Code excepts from disclosure "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). The commission states that release of the submitted audit "would compromise the lottery games and threaten the integrity and security of the lottery." The commission further states that the audit "contains 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 submitted information is confidential under

section 466.022(b) of the Government Code, and the commission must withhold it in its entirety under section 552.101 of the Government Code on that basis.¹

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 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

¹As our ruling is dispositive, we need not address any of the remaining arguments against disclosure

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,



Caroline E. Cho
Assistant Attorney General
Open Records Division

CEC/krl

Ref: ID# 226708

Enc. Submitted documents

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