



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 28, 2005

Mr. John O'Brien
Deputy Director
Legislative Budget Board
P.O. Box 12666
Austin, Texas 78711-2666

OR2005-09796

Dear Mr. O'Brien:

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# 234270.

The Legislative Budget Board (the "board") received a request for information related to the Texas Lottery Commission's disaster recovery plan. You state that some responsive information has been released to the requestor. You claim that some of the submitted information is excepted from disclosure under sections 552.101 and 552.139 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received comments from the Texas Lottery Commission (the "commission"). *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *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 in Act in certain circumstances).

Section 552.101 of the Government Code excepts from disclosure information that is deemed confidential by law, including information made confidential by statute. 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 informs this office that its function is

to exercise strict control and close supervision over all lottery games conducted in this state to promote and ensure integrity, security, honesty, and fairness in the operation and administration of the lottery. This is primarily accomplished via a complex computer network with multiple security safeguards.

The commission states that the information at issue relates to "the systems needed to restore lottery operations should a disaster befall the [c]ommission's primary location," and asserts that release of the marked information would "compromise the lottery games and threaten the integrity and security of the lottery." Based on the commission's representations and our review of the information at issue, we conclude that the marked information is confidential under section 466.022(b) of the Government Code, and the board must withhold it under section 552.101 of the Government Code on that basis. The remaining information must be released to the requestor. As our ruling is dispositive, we need not address the remaining arguments against disclosure.

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); *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 Office of the Attorney General 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jpa

Ref: ID# 234270

Enc. Submitted documents

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