



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 1, 2005

Mr. Gary Grief  
Acting Executive Director  
Texas Lottery Commission  
P. O. Box 16630  
Austin, Texas 78761-6630

OR2005-09878

Dear Mr. Grief:

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# 235501.

The Texas Lottery Commission (the "commission") received a request for several categories of information. You state you have released some information but claim that the submitted administrative reports and audit reports are excepted from disclosure under sections 552.101, 552.107, 552.117, and 552.139 of the Government Code. Additionally, you state that some of the submitted documents may contain proprietary information of Price Waterhouse Coopers, L.L.P. ("Price Waterhouse"). You indicate that the commission has notified Price Waterhouse of the commission's receipt of the request for information and of the right of the company to submit arguments to this office as to why its requested information should not be released to the requestor. *See Gov't Code § 552.305(d); see also Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances).* We have considered the exceptions you claim 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 completed reports made for the commission. Therefore, as prescribed by section 552.022, you must release the submitted information unless it is confidential under other law.

Because sections 552.101, 552.117, and 552.139 of the Government Code constitute "other law" for purposes of section 552.022, we will address the commission's claim regarding these exceptions. You also claim a portion of the submitted information is excepted from disclosure by section 552.107 of the Government Code. Section 552.107(1) protects information coming within the attorney-client privilege. However, section 552.107 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under section 552.107(1) may be waived), 665 at 2 n.5 (discretionary exceptions generally). As such, section 552.107 is not other law that makes information confidential for the purposes of section 552.022. However, the attorney-client privilege is also found in Rule 503 of the Texas Rules of Evidence. The Texas Supreme Court has held that the Texas Rules of Evidence are "other law" within the meaning of section 552.022 of the Government Code. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Thus, we will address the commission's claims regarding the applicability of the attorney-client privilege to the submitted information under Rule 503.

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 all but one of the submitted reports "would compromise the lottery games and threaten the integrity and security of the lottery." The commission further states that these reports "contain 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 these reports are confidential under section 466.022(b) of the Government Code, and the commission must withhold them in their entirety under section 552.101 of the Government Code on that basis.<sup>1</sup>

You claim the remaining submitted report is encompassed by the attorney-client privilege. Rule 503 provides in relevant part:

A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client:

(A) between the client or a representative of the client and the client's lawyer or a representative of the lawyer;

(B) between the lawyer and the lawyer's representative;

(C) by the client or a representative of the client, or the client's lawyer or a representative of the lawyer, to a lawyer or a representative of a lawyer representing another party in a pending action and concerning a matter of common interest therein;

(D) between representatives of the client or between the client and a representative of the client; or

(E) among lawyers and their representatives representing the same client.

TEX. R. EVID. 503(b)(1). A communication is "confidential" if not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication. *Id.* 503(a)(5). Thus, in order to withhold attorney-client privileged information from disclosure under rule 503, a governmental body must: (1) show that the document is a communication transmitted between privileged parties or reveals a confidential communication; (2) identify the parties involved in the communication; and (3) show that the communication is confidential by explaining that it was not intended to be disclosed to third persons and that it was made in furtherance of the rendition of professional legal services to the client. Upon a demonstration of all three factors, the information is privileged and confidential under Rule 503, provided the client has not waived the privilege or the

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<sup>1</sup>As our ruling is dispositive, we need not address the commission's remaining arguments against disclosure of this information.

document does not fall within the purview of the exceptions to the privilege enumerated in Rule 503(d). *Pittsburgh Corning Corp. v. Caldwell*, 861 S.W.2d 423, 427 (Tex. App.—Houston [14th Dist.] 1993, no writ).

You state that the remaining submitted report “was communicated between [c]ommission staff and its attorneys[,] was not intended to be disclosed to third parties [and,] and was made in the furtherance of the rendition of professional legal services.” You further state this remaining report was not “subsequently communicated to other individuals for purposes unrelated to the rendition of legal services.” Based on your representations and our review of the information at issue, we agree that this remaining submitted report is protected by the attorney-client privilege. Therefore, the commission may withhold this report pursuant to rule 503 of the Texas Rules of Evidence.

In summary, we agree the submitted reports you claim are subject to section 466.022(b) of the Government Code are made confidential under that provision and must be withheld under section 552.101 of the Government Code. The remaining submitted report may be withheld pursuant to Rule 503 of the Texas Rules of Evidence.

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).

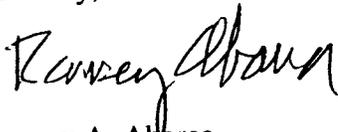
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Ramsey A. Abarca  
Assistant Attorney General  
Open Records Division

RAA/krl

Ref: ID# 235501

Enc. Submitted documents

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