



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

January 9, 2006

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

OR2006-00244

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# 239737.

The Texas Lottery Commission (the "commission") received a request for the 2005 first, second, and third quarter manufacturer reports and supplemental information filed with the commission by BK Entertainment ("BK") and Gametech International ("Gametech") and certain distributor reports for those distributors that distribute either BK or Gametech products. You claim that the requested information may be subject to section 552.101 of the Government Code. You also state that the request may implicate third party proprietary interests. Accordingly, you indicate and provide documentation showing that, pursuant to section 552.305 of the Government Code, you notified the interested third parties of the request for information and of each company's right to submit arguments explaining why the information concerning it should not be released. *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 certain circumstances). We have received correspondence from three third parties. We have considered the submitted arguments and reviewed the submitted information.

Mr. Gary Grief - Page 2

Initially, we note that LIF Capital Group, LLC., Pacific Gaming LLC., and FortuNet, Inc. have submitted comments to our office. However, the commission has informed us that the request does not relate to these three companies. Therefore, any information pertaining to these companies is not responsive to the present request, and we do not address their arguments.

Next, we note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, the remaining third parties failed to submit comments to this office explaining how release of the requested information would affect each company's proprietary interests. Therefore, the companies whose information is responsive have failed to provide us with any basis to conclude that any such company has a protected proprietary interest in any of the submitted information, and none of the information pertaining to the third parties whose information is responsive may be withheld on that basis. *See, e.g., id.* § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990).

We now address your claim under section 552.101 of the Government Code. Section 552.101 of the Government Code exempts 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 2001.216 of the Occupations Code provides as follows:

- (a) The commission may examine the books and records of the holder of or an applicant for a manufacturer's or distributor's license.
- (b) The commission may not disclose information obtained during the examination except as necessary to carry out this chapter.

Occ. Code § 2001.216. You state that it is the commission's interpretation of section 2001.216(b) "that 'information obtained during [an] examination' does not include information submitted in a required quarterly report." You state that it is the commission's "longstanding interpretation" that the confidentiality provision in section 2001.216(b) is

applicable “only to the examination of books and records of the license applicant (or renewal applicant) during the performance of an application investigation as required by” particular licensing provisions contained in the Occupations Code. You inform us that the requested information consists of quarterly reports. Further, you state that the commission has statutory authority other than section 2001.216 to require quarterly reports. Thus, we understand you to indicate that section 2001.216 is inapplicable to the requested information. Therefore, no portion of the information at issue may be withheld under section 552.101 of the Government Code on that basis. As you raise no other exceptions to disclosure of the submitted information, it 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

Mr. Gary Grief - Page 4

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,



Matthew T. McLain  
Assistant Attorney General  
Open Records Division

MM/jh

Ref: ID# 239737

Enc. Submitted documents

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Mr. Gary Grief - Page 5

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Mr. Gary Grief - Page 6

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Mr. Gary Grief - Page 7

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Mr. Gary Grief - Page 8

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