



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 12, 2006

Mr. Anthony J. Sadberry  
Acting Executive Director  
Texas Lottery Commission  
P.O. Box 16630  
Austin, Texas 78761-6630

OR2006-03673

Dear Mr. Sadberry:

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# 245988.

The Texas Lottery Commission (the "commission") received a request for information regarding a specified investigation. You state that you have released some of the requested information, but you claim that the submitted information is excepted from disclosure under sections 552.101, 552.107, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you acknowledge that the commission did not raise section 552.108 of the Government Code as an exception to disclosure within the ten-business-day deadline mandated by section 552.301(b) of the Government Code. *See Gov't Code §§ 552.301(b), .302.* Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived by the governmental body. *See Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); see also Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally).* However, the need of another governmental body to withhold information under section 552.108 can provide a compelling reason to withhold information. *See Open Records Decision No. 586 at 3 (1991).* In this instance, you have provided a letter from the Dallas County District Attorney's Office (the "district attorney's office") objecting to the release of

the submitted information. Accordingly, we will address the applicability of section 552.108 to the submitted information.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov’t Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. *See* Open Records Decision Nos. 474 (1987), 372 (1983) (where incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information relating to incident).

In its letter to the commission, the district attorney’s office objects to the release of the submitted information because it relates to a pending criminal investigation. Based upon these representations and our review, we determine that release of the submitted information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14<sup>th</sup> Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). We therefore conclude that section 552.108(a)(1) is applicable to the submitted information.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*, including a detailed description of the offense. *See* 531 S.W.2d at 185; *see also* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of basic information, the commission may withhold the submitted information from disclosure based on section 552.108(a)(1).

You claim that basic information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 466.022 of the Government Code. 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 made confidential 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 the information at issue "involve[s] maintaining the integrity and security of the operation of the lottery, especially in light of investigations which reveal criminal conduct in violation of the State Lottery Act." Based upon your representations and our review, we conclude that the commission must withhold basic information pursuant to section 552.101 in conjunction with section 466.022(b) of the Government Code. As our ruling is dispositive, we need not address your remaining claims 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,



Caroline E. Cho  
Assistant Attorney General  
Open Records Division

CEC/sdk

Ref: ID# 245988

Enc. Submitted documents

c: Mr. Lloyd H. Grant  
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(w/o enclosures)