



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 8, 2007

Mr. Anthony J. Sadberry
Texas Lottery Commission
P. O. Box 16630
Austin, Texas 78761

OR2007-14693

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 #294128.

The Texas Lottery Commission (the "commission") received a request for "information regarding all pending issues and recent complaints about Littlefield Corporation" ("Littlefield"). You state that you have released some information to the requestor. You claim that the submitted information, labeled "Exhibit B," is excepted from disclosure under sections 552.101, 552.107, 552.111, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note that most of the submitted documents were previously ruled upon by this office in Open Records Letter No. 2007-14621 (2007). In that letter ruling, we concluded that portions of the submitted e-mails and memos may be withheld under sections 552.107, 552.111, and 552.137. Since the law, facts, and circumstances surrounding this prior ruling have not changed, the department may continue to rely on Open Records Letter No. 2007-14621 as a previous determination and withhold the submitted information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We now turn to your argument regarding the information that was not ruled upon in Open Records Letter No. 2007-14621.

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 that is made confidential by statute. You claim that a portion of the submitted information is confidential under section 154.073 of the Civil Practice and Remedies Code and section 2009.054 of the Government Code. Section 154.073 provides in relevant part:

(a) Except as provided by Subsections (c), (d), (e), and (f)¹ a communication relating to the subject matter of any civil or criminal dispute made by a participant in an alternative dispute resolution procedure, whether before or after the institution of formal judicial proceedings, is confidential, is not subject to disclosure, and may not be used as evidence against the participant in any judicial or administrative proceeding.

(b) Any record made at an alternative dispute resolution procedure is confidential, and the participants or the third party facilitating the procedure may not be required to testify in any proceedings relating to or arising out of the matter in dispute or be subject to process requiring disclosure of confidential information or data relating to or arising out of the matter in dispute.

(d) A final written agreement to which a governmental body, as defined by Section 552.003, Government Code, is a signatory that is reached as a result of a dispute resolution procedure conducted under this chapter is subject to or excepted from required disclosure in accordance with Chapter 552, Government Code.

Civ. Prac. & Rem. Code § 154.073(a), (b), (d). Similarly, section 2009.054 provides as follows:

(a) Sections 154.053 and 154.073, Civil Practice and Remedies Code, apply to the communications, records, conduct, and demeanor of the impartial third party and the parties.

(b) Notwithstanding Section 154.073(e), Civil Practice and Remedies Code:

(1) a communication relevant to the dispute, and a record of the communication, made between an impartial third party and the parties to the dispute or between the parties to the dispute during the course of an alternative dispute resolution procedure are confidential and may not be disclosed unless all parties to the dispute consent to the disclosure; and

¹Subsections 154.073(c), (e), and (f) are inapplicable in this instance.

(2) the notes of an impartial third party are confidential except to the extent that the notes consist of a record of a communication with a party and all parties have consented to disclosure in accordance with Subdivision (1).

Gov't Code § 2009.054. Further, in Open Records Decision No. 658 (1998), this office found that communications during the formal settlement process were intended to be confidential. Open Records Decision No. 658 at 4; *see also* Gov't Code § 2009.054(c). You argue that the e-mails you have marked under section 2009.054 of the Government Code and section 154.073 of the Civil Practices and Remedies Code are communications that were made during informal settlement negotiations. You assert that under section 2009.054(b)(1), communications made between parties regarding alternative dispute resolution ("ADR") procedures are confidential. However, both sections 154.073 and 2009.054 pertain to communications made during an actual ADR procedure. We note, and you acknowledge, that the communications at issue were *not made during a formal ADR procedure*. Accordingly, the e-mails you have marked may not be withheld as communications made during an alternative dispute resolution procedure. As you raise no other exceptions against their disclosure, they must be released to the requestor.

In summary, the commission may rely upon our ruling in Open Records Letter No. 2007-14261 with regards to the majority of the information at issue. The remaining information 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 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,



Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/eeg

Ref: ID# 294128

Enc. Submitted documents

c: Mr. Robert McGarey, M.A.
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(w/o enclosures)