



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 27, 2008

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

OR2008-07165

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# 311196.

The Texas Lottery Commission (the "commission") received a request for online exit interviews from the Legislature from anyone leaving the commission from May 2002 to the date of the request. You state that the requested exit interviews do not contain names of departing employees or the date of their departure. Additionally, you state that the information is available to the commission from the State Auditor's website, which only contains information dating back to the year 2004. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially you inform us that the commission does have responsive State Employee Exit Survey: Agency Quarterly Reports for March 1, 2002 to May 31, 2002 and June 1, 2002 to August 31, 2002. You state that these 2002 reports were the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2003-0095 (2003). In Open Records Letter No. 2003-0095, we ruled that the requested State Auditor's Office Online Employee Exit Surveys were confidential pursuant to section 651.007(g) of the Government Code. You inform us that the submitted 2002 reports are identical to information previously ruled upon by this office. We conclude that, as we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, the commission must continue to rely on that ruling as a previous determination and withhold this information, which you have marked, in accordance with Open Records Letter No. 2003-0095. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and 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 prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

We will now consider your arguments against the disclosure of the information that was not subject to the previous ruling. 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 651.007 of the Government Code provides in relevant part as follows:

(b) Each state agency shall conduct an exit interview with an employee who leaves employment with the agency. The state agency shall conduct the exit interview by having the employee access the questionnaire posted on the state auditors Internet site and electronically submit the completed questionnaire to the state auditor.

....

(g) The responses to an exit interview questionnaire are confidential and not subject to disclosure under Chapter 552. The responses may be disclosed only to a law enforcement agency in a criminal investigation or on order of a court.

*Id.* § 651.007(b), (g). The remaining information in Exhibit B contains responses to exit surveys completed between 2004 and 2007. It does not appear that any of the exceptions in section 651.007(g) apply in this instance. Accordingly, the remaining exit survey responses in Exhibit B must be withheld from disclosure under section 552.101 of the Government Code in conjunction with section 651.007(g) of the Government Code.

In summary, the commission must continue to withhold the submitted 2002 reports that were previously ruled upon by this office in Open Records Letter No. 2003-0095. The commission must withhold the remaining information in Exhibit B from disclosure under section 552.101 of the Government Code in conjunction with section 651.007(g) of the Government Code.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

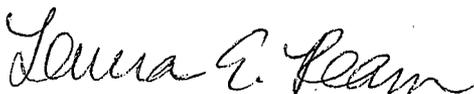
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Laura E. Ream  
Assistant Attorney General  
Open Records Division

LER/jb

Ref: .ID# 311196

Enc. Submitted documents

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(w/o enclosures)