



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 20, 2009

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

OR2009-02256

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# 335437.

The Texas Lottery Commission (the "commission") received a request for information pertaining to a specified investigation. You claim that the requested information is excepted from disclosure under sections 552.108 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you indicate that a portion of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2008-14741 (2008). With regard to the submitted information that is identical to the information previously requested and ruled upon by this office in the prior ruling, we conclude that, as we have no indication that the law, facts, or circumstances on which the prior ruling was based have changed, the commission may continue to rely upon Open Records Letter No. 2008-14741 as a previous determination and withhold or release the identical 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 prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent that the submitted information is not encompassed by the previous ruling, we will address the submitted arguments.

Section 552.108(a) 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: (1) 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 id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). This office has determined that the commission is a law enforcement agency for purposes of section 552.108. *See* Gov’t Code §§ 466.019, .020. You state that the submitted information relates to a pending criminal investigation being conducted by the Charitable Bingo Operation Division (the “division”) of the commission. You provide an affidavit from the division’s director explaining that the division is investigating a claim that carries criminal penalties pursuant to section 2001.554 of the Texas Occupations Code. Based upon these representations and our review, we conclude that the release of the submitted information would interfere with the detection, investigation, or prosecution of crime. *See* Occ. Code § 2001.554; *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th 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). Therefore, we conclude that section 552.108(a)(1) is applicable to the submitted information.

We note, however, that 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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88. The commission must release basic information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, which must be released, the commission may withhold the submitted information under section 552.108(a)(1) of the Government Code.¹

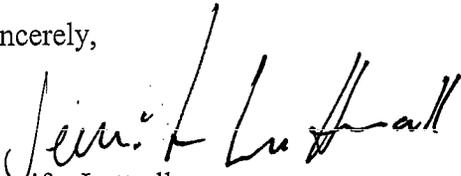
In summary, to the extent the submitted information is identical to the information previously requested and ruled upon by this office in Open Records Letter No. 2008-114741, commission may continue to rely upon that ruling as a previous determination and withhold or release the identical information in accordance with that ruling. As for the submitted information not previously ruled upon in Open Records Letter No. 2008-114741, with the exception of basic information, the commission may withhold that information under section 552.108(a)(1) of the Government Code.

This letter ruling is limited to the particular information 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 information or any other circumstances.

¹As our ruling is dispositive, we need not address your remaining argument against disclosure.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/eeg

Ref: ID# 335437

Enc. Submitted documents

c: Requestor
(w/o enclosures)