



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 22, 2009

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

OR2009-05330

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# 341518.

The Texas Lottery Commission (the "commission") received a request for a copy of the Diaz Family Trust (the "trust") agreement. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also notified representatives of the trust of this request for information and of their right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). As of the date of this letter, we have not received comments from the trust explaining why the submitted information should not be released. We have considered the submitted arguments and reviewed the submitted information.

The commission asserts that the submitted information is public information because it was collected, assembled, or maintained in connection with the transaction of official business. *See* Gov't Code § 552.002. We agree that the submitted trust agreement is public information subject to the Act. Accordingly, this information must be released, unless it falls within the scope of an exception to disclosure. *See id.* §§ 552.002(a), .021.

Next, we must address the commission's obligations under the Act. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires a governmental body to ask for the attorney general's decision and claim its exceptions to disclosure not later than the tenth business day after the date of its receipt of the written request for information. *See* Gov't Code § 552.301(b). You state the commission received the present request for information on February 9, 2009. However, you did not request a ruling from our office until February 25, 2009. Consequently, we find that the commission failed to comply with the requirements of section 552.301(b).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will consider your argument under this exception.

The commission states that the "only exception to disclosure of information related to the claim process or the prize winner [is found in] section 466.022 of the [Government Code]." Section 466.022 of the Government Code provides in part:

(a) Except as otherwise provided by law, all commission records are subject to public inspection in accordance with Chapter 552.

(b) In addition to commission records excepted from disclosure under Chapter 552, the following information is confidential and is exempt from disclosure:

...

(3) the street address and telephone number of a prize winner, if the prize winner has not consented to the release of the information.

Id. § 466.022(a), (b)(3). In particular, the commission states that "only the street address and the telephone number of a prize winner are confidential." *See id.* § 466.022(b)(3). We note, however, that section 466.022(b) provides that commission records are subject to the

exceptions found in the Act. *See id.* § 466.022(b); *see also id.* § 466.022(a). We further note that section 552.101 of the Government Code is one of these exceptions.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. This section encompasses common-law privacy which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has found that information that reflects an individual’s personal financial decisions and is not related to a financial transaction between the individual and a governmental body is protected by common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). Upon review, we conclude that the submitted information reflects the trustors’ personal financial decisions and does not involve a financial transaction between the trustors and a governmental body. Therefore, the submitted information must be withheld under section 552.101 in conjunction with common-law privacy.

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.

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,

A large, stylized handwritten signature in black ink, appearing to read 'Chris Schulz', written over a horizontal line.

Chris Schulz
Assistant Attorney General
Open Records Division

CS/cc

Ref: ID# 341518

Enc. Submitted documents

cc: Requestor
(w/o enclosures)