



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 22, 2010

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

OR2010-10988

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# 387647.

The Texas Lottery Commission (the "commission") received a request for the member names and trust agreement of a specified trust. You state the submitted trust agreement is the only responsive document held by the commission.¹ You claim that the submitted trust agreement is excepted from disclosure under section 552.101 of the Government Code. You also notified a representative of the trust of this request for information and of his right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from an interested third party. *See id.* We have considered the submitted arguments and reviewed the submitted information.

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

¹We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

Code § 552.101. This section encompasses other laws that make information confidential. The commission states 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 [the Act].

(b) In addition to commission records excepted from disclosure under [the Act], 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 “only the street address and the telephone number of a prize winner are confidential.” *See id.* § 466.022(b)(3). We note, however, section 466.022(b) provides 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 section 552.101 of the Government Code is one of these exceptions.

Section 552.101 also encompasses the doctrine of 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 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 the submitted trust agreement reflects the trustors’ personal financial decisions and does not involve a financial transaction between them and a governmental body. Therefore, the submitted trust agreement is excepted from public disclosure under section 552.101 in conjunction with the 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, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah Casterline", with a circular flourish at the end.

Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/eeg

Ref: ID# 387647

Enc. Submitted documents

c: Requestor
(w/o enclosures)