

The ruling you have requested has been modified pursuant to a court order. The court judgment has been attached to this document.



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 10, 2010

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

OR2010-12086

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# 389777.

The Texas Lottery Commission (the "commission") received a request for a written statement made by a specified lottery winner. 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. We have also considered comments submitted by an attorney ("Gardere") representing the lottery winner. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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 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) (emphasis added). You have marked the home address of the individual who purchased the winning lottery ticket. You assert this information is confidential under section 466.022(b)(3). However, you state the purchaser is “not considered the prize winner.” See 16 T.A.C. § 401.309(a) (defining “prize winner” as name of person who presented valid ticket, claimed lottery prize and recognized by the Texas Lottery as the person entitled to receive lottery prize payments and is not an assignee of the lottery prize). You explain that the purchaser is one of the trustors of a trust created to claim the prize, and the commission considers the trust to be the prize winner. Based on your representations that the purchaser is not the prize winner, we find the information pertaining to the purchaser is not confidential pursuant to section 466.022. Accordingly, no portion of the submitted information may be withheld under section 552.101 on this basis.

The commission and Gardere argue the information is protected by common-law privacy. Section 552.101 of the Government Code also 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). Gardere argues that a portion of the submitted information is confidential pursuant to common-law privacy and “special circumstances.” However, the Third Court of Appeals recently ruled that the “special circumstances” exception found in past Attorney General Open Records Decisions directly conflicts with Texas Supreme Court precedent regarding common-law privacy. *Tex. Dep’t of Pub. Safety v. Cox Tex. Newspapers, L.P. and Hearst Newspapers, L.L.C.*, 287 S.W.3d 390 (Tex. App.—Austin 2009, pet. filed). The court of appeals ruled that the two-part test set out in *Industrial Foundation* is the “sole criteria” for determining whether information can be withheld under common-law privacy. *Id.*; see also *Indus. Found.*, 540 S.W.2d at 686.

Gardere also argues the information is protected by constitutional privacy, which consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual’s interest in avoiding disclosure of personal matters. See *Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987). The first type protects an individual’s autonomy within “zones of privacy” which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. ORD 455 at 4. The

second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* at 7. The scope of information protected is narrower than that under the common-law doctrine of privacy; constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs." *Id.* at 5 (quoting *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985)).

Upon review, a portion of the submitted information is highly intimate or embarrassing and of no legitimate concern to the public. Therefore, the commission must withhold the information we marked under section 552.101 in conjunction with common-law privacy. However, no portion of the remaining information is highly intimate or embarrassing and of no legitimate concern to the public. Furthermore, this information does not relate to "the most intimate aspects of human affairs." *See id.* Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy, but may not withhold any of the remaining information on the basis of either common-law or constitutional privacy.

Gardere argues portions of the information should be withheld under the attorney-client privilege, which is covered by section 552.107 of the Government Code. Gardere also argues the information relates to a criminal investigation, and therefore subject to the law enforcement exception under section 552.108 of the Government Code. However, sections 552.107 and 552.108 only protect the interests of a governmental body and are not designed to protect the interests of private parties. *See* Open Records Decision Nos. 177 (1977) (governmental body may waive statutory predecessor to section 552.108), 676 at 10-11 (2002) (attorney-client privilege under section 552.107(1) may be waived); *see also* Open Records Decision No. 522 at 4 (1989) (discretionary exceptions are intended to protect only the interests of governmental body as distinct from exceptions intended to protect information deemed confidential by law or interests of third parties). Accordingly, the commission may not withhold any portion of the submitted information under sections 552.107 or 552.108.

In summary, the commission must withhold the information we marked under section 552.101 in conjunction with common-law privacy. The remaining information must be released.

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](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 "Chris Schulz", with a long horizontal flourish extending to the right.

Chris Schulz  
Assistant Attorney General  
Open Records Division

CS/em

Ref: ID# 389777

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Cause No. D-1-GN-10-002891

JOHN DOE,  
*Plaintiff,*

v.

TEXAS ATTORNEY GENERAL GREG  
ABBOTT,  
*Defendants.*

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IN THE DISTRICT COURT

53rd JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

**AGREED FINAL JUDGMENT**

On this date, the Court heard the parties' motion for agreed final judgment. Plaintiff John Doe (Doe) and Defendant Greg Abbott, Attorney General of Texas, appeared by and through their respective attorneys and announced to the Court that all matters of fact and things in controversy between them had been fully and finally compromised and settled.

This is an action brought by Doe against the Attorney General under the Public Information Act (PIA), Tex. Gov't Code Ann. ch. 552 (West 2004 & Supp. 2010). To prevent the release of the information at issue pending final resolution of this matter, Texas Lottery Commission's (TLC) Executive Director Gary Grief and General Counsel Kimberly Kiplin (collectively as Grief and Kiplin) were sued only for injunctive relief in their official capacities. By virtue of this settlement between Doe and the Attorney General, Doe's claims against Grief and Kiplin are released.

The parties represent to the Court that: in compliance with Tex. Gov't Code § 552.325(c), the requestor, Peggy O' Hare, reporter for the Houston Chronicle, through her counsel was sent reasonable notice of this setting and of the parties' agreement; Grief and Kiplin must withhold some of the information at issue; the requestor was also informed of her right to intervene in the suit to contest the withholding of this information; and the requestor has not informed the parties of her intention to intervene.

Neither has the requestor filed a motion to intervene nor appeared today. After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED that:

1. A portion of the information at issue, specifically, the information as marked by the Attorney General in the "witness statement" at issue, is confidential under common law privacy and excepted from disclosure pursuant to Tex. Gov't Code § 552.101.

2. Grief and Kiplin shall withhold from the requestor the information described in Paragraph 1 of this Judgment.

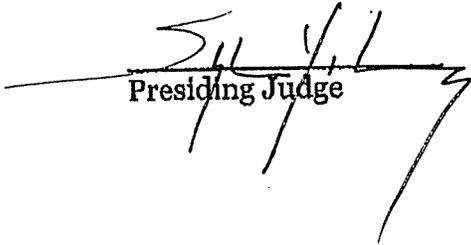
3. If it has not already done so, Grief and Kiplin shall disclose all remaining information issue to the requestor promptly upon receipt of a final judgment signed by the court.

4. All costs of court are taxed against the parties incurring the same;

5. All relief not expressly granted is denied; and

6. This Agreed Final Judgment finally disposes of all claims between the parties and is a final judgment.

SIGNED this the 31 day of March, 2011.

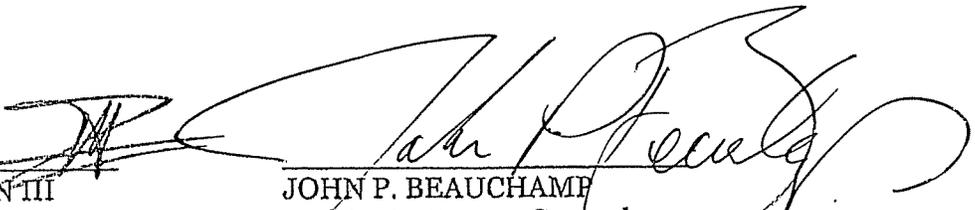
  
Presiding Judge

APPROVED:



ROBERT P. JOHNSON III  
Gardere Wynne Sewell, LLP  
600 Congress Avenue, Suite 3000  
Austin, Texas 78701-2978  
Telephone: (512) 542-7127  
Facsimile: (512) 542-7327  
State Bar No. 10786400

Attorney for Plaintiff



JOHN P. BEAUCHAMP  
Assistant Attorney General  
Open Records Litigation  
Environmental Protection and  
Administrative Law Division  
P.O. Box 12548, Capitol Station  
Austin, Texas 78711-2548  
Telephone: (512) 475-4195  
Facsimile: (512) 320-0167  
State Bar No. 24051634

Attorneys for Defendant  
Attorney General