



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 11, 2011

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

OR2011-11593

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# 426600 (TLC # B-14293).

The Texas Lottery Commission (the "commission") received a request for the following information pertaining to a complaint filed with the commission against the requestor's clients: information obtained from the complainant, the April 28, 2007 complaint, and records the commission took from the requestor's clients in February 2008. You state the commission has released some responsive information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.116 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you state that portions of the submitted information are non-responsive to the request for information because they were not obtained from the complainant and are neither the April 28, 2007 complaint nor records the commission took from the requestor's clients. Upon review, we agree this information is not responsive to the request. This decision does not address the public availability of the non-responsive information, and such information need not be released.

Section 552.108(a)(1) 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). This office has determined the commission is a law enforcement agency. *See* Gov’t Code §§ 466.019 (commission is authorized to enforce violations of lottery laws), .020 (commission is authorized to maintain department of security staffed by commissioned peace officers or investigators). You state the portions of the submitted information you marked are related to an open investigation that is pending in the commission’s Enforcement Division and that release of this information would interfere with the detection, investigation, or prosecution of crime. Based upon your representations and our review, we conclude the release of this information at this time would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, the commission may withhold the information you marked under section 552.108(a)(1) of the Government Code.¹

You contend the remaining responsive information is excepted under section 552.116. Section 552.116 provides as follows:

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a school district, a hospital district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from [required public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [public disclosure] by this section.

(b) In this section:

(1) ‘Audit’ means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, the bylaws adopted by or other action of the governing board of a hospital district, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal

¹As our ruling is dispositive for this information, we need not address your other raised exception to its disclosure.

history background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.

(2) 'Audit working paper' includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

Act of May 29, 2011, 82nd Leg., R.S., H.B. 2947, §§ 1, 2 (to be codified as amendments to Gov't Code § 552.116(a) and (b)(1)). You state the information you marked constitutes audit working papers of the commission's Charitable Bingo Operations Division. You inform us that this division performs audits pursuant to subsection 2001.560(c) of the Occupations Code. Based on your representations and our review, we find that the information you marked may be withheld under section 552.116 of the Government Code.

In summary, the commission may withhold the responsive information you marked under sections 552.108(a)(1) and 552.116 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.

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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/tf

Ref: ID# 426600

Enc. Submitted documents

c: Requestor
(w/o enclosures)