



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 5, 2011

Mr. Gary Grief
Deputy Executive Director
Texas Lottery Commission
P.O. Box 16630
Austin, Texas 7876-6630

OR2011-14411

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# 431986 (TLC File # B-14518).

The Texas Lottery Commission (the "commission") received a request for all licensing files and materials for two named entities. You state the commission has released some information to the requestor. You state the commission redacted information under sections 552.136 and 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.107, 552.108, and 552.111 of the Government Code. You also inform us release of this information may implicate the proprietary interests of Big Trak

¹Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including access device numbers under section 552.136 and e-mails addresses of members of the public under section 552.137, without the necessity of requesting an attorney general decision. However, on September 1, 2011, the Texas legislature amended section 552.136 to allow a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See* Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 27 (to be codified at Gov't Code § 552.136(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See* Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 27 (to be codified at Gov't Code § 552.136(d), (e)). Thus, the statutory amendments to section 552.136 of the Government Code supercede Open Records Decision No. 684 on September 1, 2011. Therefore, a governmental body may only redact information subject to section 552.136(b) in accordance with section 552.136, not Open Records Decision No. 684.

Technologies, L.L.C. ("Big Trak"), Palmetto Paper & Specialties, Inc. ("Palmetto"), and Electronic Game Solutions, Inc. ("EGS"). Accordingly, you notified Big Trak, Palmetto, and EGS of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from EGS. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note some of the submitted information is not responsive because it was created after the date the commission received the instant request. The commission need not release this nonresponsive information, which we have marked, in response to this request, and this ruling will not address that information.

Next, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, Big Trak and Palmetto have not submitted comments to this office explaining why the information submitted by the commission should not be released. Therefore, we have no basis to conclude these third parties have a protected proprietary interest in this information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish prima facie case that information is trade secret), 542 at 3. Accordingly, the commission may not withhold any portion of the information it submitted for our review based upon the proprietary interests of Big Trak or Palmetto.

Next, we note the submitted information contains court-filed documents subject to section 552.022(a)(17) of the Government Code. Information filed with a court is generally a matter of public record under section 552.022(a)(17) of the Government Code and may only be withheld if expressly confidential under other law. *See* Gov't Code § 552.022(a)(17). You claim the court-filed documents are excepted from disclosure under section 552.108 of the Government Code. However, section 552.108 is a discretionary exception that protects a governmental body's interests and is, therefore, not "other law" for purposes of section 552.022(a)(17). *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). Therefore, the commission may not withhold the court-filed documents, which we have marked, under section 552.108 of the Government Code. Additionally, we note information that has been filed with a court is not protected by common-law privacy. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (common-law privacy not

applicable to court-filed document). As you raise no further exceptions to disclosure of the court-filed documents, the commission must release these documents.

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 2001.216 of the Occupations Code provides as follows:

- (a) The commission may examine the books and records of the holder of or an applicant for a manufacturer’s or distributor’s license.
- (b) The commission may not disclose information obtained during the examination except as necessary to carry out this chapter.

Occ. Code § 2001.216. The commission asserts section 2001.216 is applicable to a portion of the remaining information. We understand it is the commission’s “longstanding interpretation” that the confidentiality provision in section 2001.216(b) applies to the information obtained from the books and records of a license applicant (or renewal applicant) during a commission examination pursuant to section 2001.302 of the Occupations Code. The commission indicates it obtained the information it has marked pursuant to section 2001.302 for the purposes of investigating Palmetto’s license application. Accordingly, we conclude section 2001.216(b) is applicable to the information the commission has marked and must be withheld under section 552.101 of the Government Code.

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 information you have marked is related to a pending investigation by the commission’s Enforcement Division of possible criminal violations of the Bingo Enabling Act 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. *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); *see also* Occ. Code § 2001.554. Thus, we find section 552.108(a)(1) is generally applicable to the information you have marked.

We note, however, 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). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes, among other items, the identity of the complainant. ORD 127 at 3-4. Accordingly, with the exception of the basic information, the commission may withhold the information you have marked under section 552.108(a)(1) of the Government Code.²

Lastly, we address your claim under common-law privacy for the remaining information. Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). We note, however, common-law privacy protects the interests of individuals, not those of corporate and other business entities. *See* Open Records Decision Nos. 620 (1993) (corporation has no right to privacy), 192 (1978) (right to privacy is designed primarily to protect human feelings and sensibilities, rather than property, business, or other pecuniary interests); *see also United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950) (cited in *Rosen v. Matthews Constr. Co.*, 777 S.W.2d 434 (Tex. App.—Houston [14th Dist.] 1989), *rev’d on other grounds*, 796 S.W.2d 692 (Tex. 1990)) (corporation has no right to privacy). Upon review, we find you have not demonstrated the remaining information is highly intimate or embarrassing and not of legitimate public concern. Therefore, no portion of the remaining information may be withheld under section 552.101 on the basis of common-law privacy.

In summary, the commission must release the court-filed documents we have marked under section 552.022(a)(17) of the Government Code. The commission must withhold the information it has marked under section 552.101 of the Government Code in conjunction with section 2001.216(b) of the Occupation Code. With the exception of basic information, the commission may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The commission must release the remaining information to the requestor.

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.

²As our ruling is dispositive, we need not address the commission’s or EGS’s remaining arguments against disclosure of this information.

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/agn

Ref: ID# 431986

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Larry R. Scott
Big Trak Technologies, L.L.C.
3333 Alameda, Apartment 21E
Corpus Christi, Texas 78411
(w/o enclosures)

Mr. DeWayne Bohanna
Palmetto Papers & Specialties, Inc.
P.O. Box 291329
Columbia, South Carolina 29229
(w/o enclosures)

Ms. Shannon W. Bangle
Beatty Bangle Strama
100 West 15th Street, Suite 1450
Austin, Texas 78701
(w/o enclosures)