



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 2, 2011

Mr. Mark Fenner  
General Counsel  
Texas Racing Commission  
P.O. Box 12080  
Austin, Texas 78711-2080

OR2011-17789

Dear Mr. Fenner:

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# 437728.

The Texas Racing Commission (the "commission") received a request for information pertaining to greyhound disciplinary rulings and investigations concerning three named individuals and two named businesses during a specified time period. You state the commission has released some of the responsive information. 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.

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. Section 552.101 encompasses section 2.15 of the Texas Racing Act, which regulates horse racing and greyhound racing in Texas. Section 2.15 provides:

All records of the commission that are not made confidential by other law are open to inspection by the public during regular office hours. All applications for a license under this Act shall be maintained by the commission and shall

be available for public inspection during regular office hours. The contents of the investigatory files of the commission, however, are not public records and are confidential except in a criminal proceeding, in a hearing conducted by the commission, on court order, or with the consent of the party being investigated.

V.T.C.S. art. 179e § 2.15. Section 2.15 makes investigative files of the commission confidential. *See* Open Records Decision Nos. 567, 548 (1990). You state that Exhibit A contains administrative reports from the Texas Department of Public Safety (“DPS”) which are part of the commission’s investigatory files. You also state Exhibit A contains investigative reports prepared by the commission’s own licensed peace officers. You also note Exhibit B consists of a video provided to the commission by DPS as part of its investigative report. You state none of the documents in Exhibit A were entered into evidence at a commission hearing, but the video in Exhibit B was shown to commission judges as part of an administrative hearing. This office determined in Open Records Decision No. 548 that the confidentiality afforded by section 2.15 for investigative records remains in force even after an investigative file has been used in a commission hearing. *See id.* (construing statutory predecessors to sections 5.04 and 2.15 of article 179e, Vernon’s Civil Statutes).<sup>1</sup> You do not inform us that the subject of the investigation has consented to the release of the records at issue or that the commission has been presented with a court order for the information. Based on your representations and our review, we find that the information in Exhibits A and B is confidential pursuant to section 552.101 of the Government Code in conjunction with section 2.15 of article 179e of Vernon’s Civil Statutes. Therefore, the commission must withhold the submitted information on that basis.

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

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<sup>1</sup>The statutory predecessor to section 2.15 read as follows: “All records of the commission that are not made confidential by other law are open to inspection by the public during regular office hours. The contents of the investigatory files of the commission, however, are not public records and are confidential except in a criminal proceeding or in a hearing conducted by the commission.” *See* Texas Racing Act, 69th 2d C.S., ch. 19, § 1, 1986 Tex. Gen. Laws 48, 53, *amended by* Act of May 18, 1991, 72d. Leg. R.S., ch. 386, § 5, 1991 Tex. Gen. Laws 1444, 1446. We will cite to the current version of section 2.15 as the 1991 amendment does not affect our analysis.

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 cursive script that reads "Tamara H. Holland".

Tamara H. Holland  
Assistant Attorney General  
Open Records Division

THH/ag

Ref: ID# 437728

Enc. Submitted documents

c: Requestor  
(w/o enclosures)