



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 12, 2012

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

OR2012-00646

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# 442104 (TLC# B-14898).

The Texas Lottery Commission (the "commission") received a request for any communications pertaining to grievances against four specified companies. You state you have released some of the responsive information to the requestor. You indicate two e-mail addresses were redacted from that information pursuant to Open Records Decision No. 684 (2009).¹ You claim portions of the submitted information are 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. This exception encompasses information protected by the common-law informer's privilege, which has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law enforcement authority, provided the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The

¹Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information without the necessity of requesting an attorney general decision, including an e-mail address of a member of the public under section 552.137 of the Government Code.

informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law* § 2374, at 767 (J. McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. See Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5.

You state the information you have marked consists of the identifying information of individuals who have reported violations of sections 402.200 and 402.210 of title 16 of the Texas Administrative Code and sections 2001.420, 2001.502, and 2001.552 of the Texas Occupations Code. You also state the alleged violations were submitted to the commission, which has administrative and law enforcement authority over the conduct of bingo in Texas. You also inform us administrative penalties may be imposed for violations of the Bingo Enabling Act. You do not indicate, nor does it appear, the subject of the complaint knows the identities of the complainants. Therefore, we conclude the commission may withhold the informants' identifying information, which we have marked, under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. However, we note one of the individuals you have marked reported the alleged violations to the San Antonio Police Department (the "department") rather than the commission. The department then notified the commission. Thus, the commission has failed to demonstrate the applicability of the informer's privilege to the remaining marked information. Accordingly, the remaining information you have marked may not be withheld under section 552.101 on the basis of the informer's privilege and 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, 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,



Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/em

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Enc. Submitted documents

c: Requestor
(w/o enclosures)