



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 12, 2016

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

OR2016-22937

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# 630076 (TLC File# L-21689).

The Texas Lottery Commission (the "commission") received a request for all e-mails, faxes, letters, or phone records between any commission staff members and a named individual, since a specific date. The commission states it will release some information. The commission claims the submitted information is excepted from disclosure under sections 552.104 and 552.111 of the Government Code. We have considered the exceptions the commission claims and reviewed the submitted information.

Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The commission represents the information it has marked pertains to a competitive bidding situation. In addition, the commission states the contract at issue includes optional extensions for three additional two-year periods, and the procurement process for this contract would take up to three years from development of the request for proposals to execution of the contract. The commission further states commission staff has been directed to open discussions and negotiations with the current contractor for a potential contract extension, and if the discussions do not result in an extension, the commission may pursue a new procurement process. The commission asserts

release of the submitted information would hurt its ability to negotiate an extension of the current contract or any potential new contract if extension negotiations fail. After review of the information at issue and consideration of the arguments, we find the commission has established the release of some of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the commission may withhold the information we have marked under section 552.104(a) of the Government Code.<sup>1</sup> However, we find the commission has failed to demonstrate release of the remaining information at issue would give advantage to a competitor or bidder. Accordingly, the commission may not withhold any of the remaining information at issue under section 552.104 of the Government Code. The commission must release the remaining information.

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Rahat Huq  
Assistant Attorney General  
Open Records Division

RSH/som

Ref: ID# 630076

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>1</sup>As our ruling is dispositive, we need not address the commission's remaining argument against disclosure of this information.