

C. Tom Clowe, Jr.  
Chairman

James A. Cox, Jr.  
Commissioner

Rolando Olvera  
Commissioner



# TEXAS LOTTERY COMMISSION

Gary Grief, Acting Executive Director

William L. Atkins, Director Charitable Bingo Operations

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SEP 29 2005  
OPINION COMMITTEE

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SEP 29 2005  
OPEN RECORDS DIVISION

September 28, 2005

The Honorable Greg Abbott  
Attorney General of Texas  
Price Daniel Building  
209 West 14<sup>th</sup> Street, 6<sup>th</sup> Floor  
Austin, Texas 78711

Via: HAND DELIVERY

RQ-0399-GA

FILE # ML-44430-05

ID. # 44430

Re: Request for Attorney General Opinion Pursuant to Section 402.042 of the Texas Government Code.

Dear General Abbott:

The Texas Lottery Commission (the "Commission") respectfully files this request for a formal decision pursuant to section 402.042 of the Texas Government Code. The Commission seeks your opinion about the scope of the confidentiality provision in §2001.216 of the Bingo Enabling Act,<sup>1</sup> which 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.

The issue has arisen in the context of the Bingo Services Center, an internet website application developed to enable licensees and the public to access information related to charitable bingo activity in Texas. The Commission plans to post on the Bingo Services Center the quarterly reports submitted by licensed manufacturers and distributors in accordance with 16 Tex. Admin. Code §402.600(e).<sup>2</sup> A copy of a typical quarterly report form is attached to this letter.

<sup>1</sup> Tex. Occ. Code §2001.001 *et seq.* The predecessor statute to §2001.216 is Vernon's Ann. Civil Stat. §179d sec. 13c (d).

<sup>2</sup> 16 Tex. Admin Code §402.600(e) requires manufacturers and distributors to file quarterly reports "under oath" and reflecting "each sale or lease of bingo equipment, and to the total sales of cards, sheets, pads and instant bingo to a person or organization in this state or for use in this state." This report also requires the manufacturer or distributor to provide the name of licensed purchaser of its products and the sales amounts attributed to each purchaser. It has also been the consistent interpretation and application by this and prior commissions that the quarterly report is a public document, therefore providing a copy of this report whenever asked via an open records request. The Commission believes that it has been generally recognized in the industry that this is a public document. There has never been a request not to disclose these reports, nor a complaint that the commission does routinely disclose these reports.

The Commission's interpretation of §2001.216(b) is that "information obtained during [an] examination" does not include information submitted in a required quarterly report. First, it is §2001.215, not §2001.216, that authorizes the Commission to require quarterly reports.<sup>3</sup> Furthermore, it is the Commission's longstanding interpretation that the confidentiality provision in §2001.216(b) applies only to the examination of books and records of the license applicant (or renewal applicant) during the performance of an application investigation as required by the licensing provisions of Tex. Occ. Code §§2001.301,<sup>4</sup> 2001.302<sup>5</sup> and 16 Tex. Admin. Code §402.400.

The Commission also seeks your opinion about the scope of §2001.216(b) in several other contexts. Specifically, the Commission seeks your opinion as to whether the confidentiality provision applies to the following:

- 1) Information obtained during complaint investigations made regarding licensed manufacturers or distributors;
- 2) Required records, reviews and inspections; and
- 3) Other information obtained from licensed manufacturers or distributors.

#### **Complaint Investigations:**

The Commission's questions about §2001.216(b) initially arose after the recent receipt of an open records request for two reports resulting from the investigation of a complaint involving two licensed bingo distributors.<sup>6</sup> Both the current statute and its predecessor are part of the Bingo Enabling Act's provisions relating to the licensing of manufacturers and distributors of bingo related equipment. For many years, Charitable Bingo directors, managers and employees have interpreted and applied this statute as part of the Bingo Enabling Act's licensing, or licensing renewal, process.<sup>7</sup> As stated above,

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<sup>3</sup> Tex. Occ. Code §2001.215 provides: "The Commission by rule may require a holder of a manufacturer's or distributor's license to keep records and file reports."

<sup>4</sup> Tex. Occ. Code §2001.301 provides, "Promptly after the filing of the application for a license under this chapter, the commission shall investigate the qualifications of each applicant and the merits of the application."

<sup>5</sup> Tex. Occ. Code §2001.302 provides, "(a) In addition to any required application form, a license applicant or license holder shall submit any supplemental information requested b the commission. (b) The commission may deny a license application or revoke a license based on a failure to submit requested supplemental information when required."

<sup>6</sup> This request and the responsive investigation reports are the subject of a pending open records request to your office, ID #236060.

<sup>7</sup> Only two isolated deviations were found to the interpretation and application noted above. In the first instance, an investigator in the enforcement section of the legal services division was assigned the task of investigating a complaint asserted against two licensed distributors. In the performance of his duties, this newly hired investigator sent a letter to the distributors asking for relevant documents and citing §2001.216 as his authority to receive said documents. The second exception occurred when an audit manager sent a letter to a licensed manufacturer and distributor investigating a complaint that certain pull-tab bingo games were not being played as approved by the Commission. This manager cited section §2001.216 as authority to obtain and review necessary records. No request has ever been made for these documents or the resulting report. As of this date, these documents have been maintained and kept confidential.

the consistent practice has been to apply this provision to the review of documentation provided in addition to the application itself by the license applicant (or renewal applicant) during the performance of an application investigation as required by the licensing provisions of Tex. Occ. Code §§2001.301,<sup>8</sup> 2001.302<sup>9</sup> and 16 Tex. Admin. Code §402.400. Additionally, according to Tex. Occ. Code §2001.560, the Commission has the authority to review the records of a licensee in order to verify the accuracy of reports made and required by the Commission.

### **Required Records, Reviews and Inspections:**

Under the authority set out in §2001.215 of the Bingo Enabling Act, the Commission may require, by rule, that licensed manufacturers and distributors keep certain records and file certain reports. In addition to the information required with the original or renewal application, the records would include documentation specifically related to pull-tab bingo tickets,<sup>10</sup> bingo card/paper products,<sup>11</sup> card-minding devices or systems,<sup>12</sup> pull-tab or instant bingo dispensers,<sup>13</sup> accounting and business activity,<sup>14</sup> and quarterly reports (noted above).<sup>15</sup> Only one other provision addresses the potential confidentiality of a review by the Commission of these required records. In response to a request for records during a general audit, and pursuant to 16 Tex. Admin. Code §402.500 *et seq.*, a licensed manufacturer or distributor may make a claim of confidentiality or privilege and provide the Commission with a summary or brief description of the records and an explanation as to the basis for their confidentiality or privilege. Other than the general audit, licensed manufacturers are required to submit quarterly reports and are subject to books and records inspections<sup>16</sup> and compliance reviews.<sup>17</sup> None of these rules, nor any other of the Bingo Enabling Act statutes, provide for the confidentiality of information obtained during such examination or inspection of records.

### **Other Information Obtained:**

The information obtained from the licensed manufacturer or distributor in the reviews, investigations, or inspections noted above often includes bookkeeping records, invoices and other business activity records. Occasionally, however, the information

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<sup>8</sup> Tex. Occ. Code §2001.301 provides, "Promptly after the filing of the application for a license under this chapter, the commission shall investigate the qualifications of each applicant and the merits of the application."

<sup>9</sup> Tex. Occ. Code §2001.302 provides, "(a) In addition to any required application form, a license applicant or license holder shall submit any supplemental information requested by the commission. (b) The commission may deny a license application or revoke a license based on a failure to submit requested supplemental information when required."

<sup>10</sup> 16 Tex. Admin Code §402.300(g).

<sup>11</sup> 16 Tex. Admin Code §402.301(e).

<sup>12</sup> 16 Tex. Admin Code §402.302(h).

<sup>13</sup> 16 Tex. Admin Code §402.303(e).

<sup>14</sup> 16 Tex. Admin Code §402.500(b) & (d).

<sup>15</sup> 16 Tex. Admin Code §402.600(a) & (e).

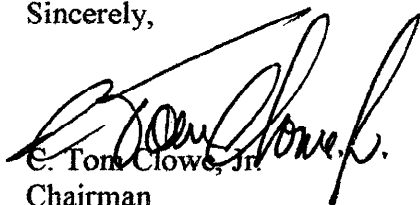
<sup>16</sup> 16 Tex. Admin Code §402.703.

<sup>17</sup> 16 Tex. Admin Code §402.705.

obtained may result from an interview and be summarized in a report by the investigator or auditor. Additionally, the information may include documentation (such as correspondence or emails) originating from a third party, but included in the records being reviewed, inspected or examined.

I appreciate your attention to this matter. If you need more information, please contact Deanne Rienstra, Assistant General Counsel at 344-5205.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Tom Clowe, Jr.", written over a printed name and title.

E. Tom Clowe, Jr.  
Chairman

cc: James A. Cox, Commissioner  
William L. Atkins, Director Charitable Bingo Operations

# Sample Quarterly Report

## Manufacturer/Distributor/System Service Provider Information

Ver. 1.0 8/2002

Organization Name

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Organization Mailing Address

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City, State, Zip

---

Taxpayer Number

---

Quarter

(20021, 20022 etc.)

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M=Manufacturer D=Distributor

S=System Service Provider

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Number of Supplement Pages

1

To provide good customer service, the Texas Lottery Commission is making available to licensees automated bingo forms to maintain records. No Licensee is required to use the forms. The licensees will continue to be responsible for the accuracy of the information contained in the forms.



Texas Lottery Commission  
 BMDs 9696  
 Form

**TEXAS BINGO MANUFACTURER/DISTRIBUTOR QUARTERLY REPORT SUPPLEMENT**

a. Manufacturer/Distributor 0	b. Taxpayer Number 0	c. Due Date #N/A	d. Filing period #N/A	
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f.	<input type="checkbox"/> M=Manufacturer <input type="checkbox"/> D=Distributor <input type="checkbox"/> S=System Service Provider
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Licensee Name	Licensee Taxpayer Number	1. Total Sales of Instant Bingo	2. Total Sales of Bingo Cards, Sheets & Pads	3. Total Sales of Bingo Equipment	4. Total Amount of Sales (Total of Items 1 - 3)	5. Total Lease of Bingo Equipment
					-	
					-	
					-	
					-	
					-	
					-	
					-	
					-	
					-	
					-	
					-	
					-	
					-	
<b>PAGE TOTALS</b>		6. -	7. -	8. -	9. -	10. -

<b>GRAND TOTAL</b>	6. -	7. -	8. -	9. -	10. -
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Texas  
Lottery  
Commission  
Form

BMDR  
0996

YOU MUST FILE A REPORT EVEN IF NO SALES WERE MADE

a.

## TEXAS BINGO MANUFACTURER/DISTRIBUTOR QUARTERLY REPORT

b. Taxpayer Number  
0

c. Filing period  
#N/A

e. Due date  
#N/A

f. Manufacturer/Distributor name and mailing address

g. Number of supplements attached  
1

Attach All Supplement  
Pages to This Report.

h.  M=Manufacturer  
 D=Distributor  
 S=System Service  
Provider

### BINGO EQUIPMENT AND SUPPLIES SOLD & LEASED (Use totals from all supplement pages)

1.	Total sales of Instant Bingo (Total of Item 6 on all supplement pages)	1.	\$	-
2.	Total sales of Bingo cards, sheets and pads (Total of Item 7 on all supplement pages)	2.	\$	-
3.	Total sales of Bingo equipment (Total of Item 8 on all supplement pages)	3.	\$	-
4.	TOTAL AMOUNT OF SALES MADE THIS QUARTER (Total of Items 1-3 above) (Same as the total of Item 9 on all supplement pages)	4.	\$	-
5.	Total Lease of Bingo equipment (Total of Item 10 on all supplement pages)	5.	\$	-
6.	TOTAL AMOUNT OF SALES & LEASE MADE THIS QUARTER (Total of Items 4 & 5 above)	6.	\$	-

I declare that the information in this document and all attachments is true and correct to the best of my knowledge and belief.

Authorized agent  <b>sign here</b>	Title
Daytime Phone Number (Area code and number)	Date

Complete this report and all supplement pages and mail to:

Charitable Bingo Operations Division  
Texas Lottery Commission  
P.O. Box 16630  
Austin, Texas 78761-6630