



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 23, 1994

Ms. Nora A. Linares
Executive Director
Texas Lottery Commission
P.O. Box 16630
Austin, Texas 78761-6630

OR94-481

Dear Ms. Linares :

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 27044.

The Texas Lottery Commission (the "commission") received a request for information about lottery retailers in Midland, Ector, Andrews, Martin, Howard, Upton, Crane, Winkler, Ward, Reives, Pecos, Gaines and Lamesa counties who are not in compliance with federal law, the Americans with Disabilities Act ("ADA"). Your letter states that the commission does not issue licenses to applicants unless they certify compliance with the ADA. However, the commission also conducts on-site inspections to determine licensee compliance with the ADA. You state:

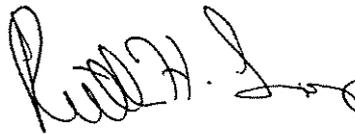
The scope of the inspections is to ensure that Lottery retailer locations are accessible to persons with disabilities who want to purchase a Lottery ticket. At this point, initial inspections have occurred. These initial inspections have revealed that a percentage of these locations appear to be inaccessible to persons with disabilities who want to purchase a Lottery ticket. Lottery retailers of these particular locations have been given a period of time in which to make the necessary changes to the locations so that such locations will be accessible. After this time period expires, administrative litigation will be initiated against those Lottery licensees for those locations which still appear inaccessible to persons with disabilities who want to purchase a Lottery ticket.

You have submitted to our office for review representative samples of the inspection records at issue. You indicate that the commission "anticipates litigation" but that no such litigation has been initiated at this point. On the basis of the possibility of administrative litigation against non-complying licensees, you assert that the requested information is excepted under section 552.103.¹

We disagree. To show that section 552.103 is applicable, a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to the litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The governmental entity must meet both prongs of this test for information to be excepted under section 552.103. However, in this situation the prospect of litigation is too speculative for section 552.103 to be applicable. Open Records Decision Nos. 518 (1989) at 5 (governmental body must show that litigation involving a specific matter is realistically contemplated); 328 (1982) at 1 ("mere chance" of litigation does not trigger litigation exception.) The records at issue must therefore be released to the requestor.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/LRD/rho

Ref.: ID# 27044

Enclosures: Submitted documents

¹You contend that the commission "is not in a position to provide the requestor with a list of Lottery retailers who are not in compliance until such time as an administrative final order containing a finding of noncompliance exists." We note that a governmental agency must make a good faith effort to relate a request to information held by it. Open Records Decision No. 561 (1990) at 8. Since what appear to be responsive documents were submitted to this office for review, the commission apparently has records which might satisfy the request. Of course, the commission may make clear to the requestor the distinction between an initial determination of noncompliance and a final order of noncompliance.

cc: Ms. Kimberly L. Kiplin
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