



January 14, 2002

Ms. Linda Cloud  
Executive Director  
Texas Lottery Commission  
P.O. Box 16630  
Austin, Texas 78761-6630

OR2002-0211

Dear Ms. Cloud:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 157291.

The Texas Lottery Commission (the "commission") received a written request for various records pertaining to, among other things, certain matters currently being considered by the commission. You state that some responsive information will be made available to the requestor.<sup>1</sup> You contend that the records at issue are excepted from required public disclosure pursuant to sections 552.107(1) and 552.111 of the Government Code.<sup>2</sup>

You characterize the documents labeled as Exhibits B, B-1, C, and C-1 as attorney-client communications. Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107(1) excepts from public disclosure only "privileged information," that is, information that reflects either client confidences to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. Open Records Decision No. 574 at 5 (1990). After reviewing Exhibits B, B-1, C, and C-1, we agree that these documents are protected by the attorney-client privilege and thus may be withheld from the public in their entirety pursuant to section 552.107(1) of the Government Code.

---

<sup>1</sup>You inform us that some of the records the commission intends to release were among those records you originally argued were excepted from public disclosure. Accordingly, we do not address the extent to which any of those documents come within the protection of the exceptions you raise.

<sup>2</sup>Although you also raise section 552.101 of the Government Code, you have made no argument as to how this exception applies. However, because the other exceptions you raise are dispositive, we need not consider the applicability of section 552.101 in this instance.

You also seek to withhold a draft of a document you have labeled as "Draft of TLC Marketing Plan." Section 552.111 excepts from required public disclosure "an interagency or intra-agency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. The draft of a document that has been released or is intended for release in final form necessarily represents the advice, opinion, and recommendation of the drafter as to the form and content of the final document, and may therefore be withheld under section 552.111 of the Government Code. See Open Records Decision No. 559 (1990).

Generally, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. Open Records Decision No. 615 at 5 (1993). However, where a document is a genuine preliminary draft that has been released or is intended for release in final form, factual information in that draft which also appears in a released or releasable final version is excepted from disclosure by section 552.111. Open Records Decision No. 559 (1990). However, severable factual information appearing in the draft but not in the final version is not excepted by section 552.111. *Id.* Assuming the final version of the marketing plan will be released to the public once it is adopted by the commission, we conclude that the commission may withhold the draft plan at this time pursuant to section 552.111 of the Government Code.

Finally, you have also submitted to this office the October 30, 2001 inter-office memorandum to which the draft marketing plan was attached. It is not clear to this office whether you still seek to withhold the marked portion of this memorandum pursuant to section 552.111. However, after reviewing the marked information, we conclude that no portion of this document constitutes the type of information that is excepted from public disclosure under section 552.111. Accordingly, the commission must release this document in its entirety.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

*Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

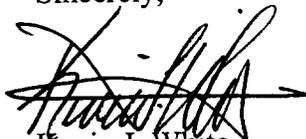
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kevin J. White  
Assistant Attorney General  
Open Records Division

KJW/RWP/sdk

Ref: ID# 157291

Enc: Submitted documents

c: Ms. Dawn Nettles  
*The Lotto Report*  
P.O. Box 495033  
Garland, Texas 75049-5033  
(w/o enclosures)