



September 12, 2002

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

OR2002-5105

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# 168518.

The Texas Lottery Commission (the “commission”) received a request for 1) “the monthly report [the commission] receives from G-Tech”; 2) “copies of the shipping, receiving and check papers for the month of June for all scratch off tickets received at the G-Tech warehouse”; 3) “the ‘pic’n pac initial list’ and the procedures the warehouse personnel must follow in . . . shipping scratch tickets”; 4) “the shipping papers of the shipping of scratch tickets during the month of June”; 5) those pages of the commission’s contract with G-Tech that summarize all reports that G-Tech must supply to the commission; and 6) “a copy of the **FRONT SIDE** only of the Sherman lotto Texas ticket ticket [sic] that was claimed yesterday.” You state that much of the requested information was made available to the requestor but claim that the information you have submitted for review is excepted from disclosure under section 552.101 of the Government Code. In addition, you have notified GTECH Corporation (“GTECH”), a third party whose proprietary interests may have been implicated by the request, pursuant to section 552.305 of the Government Code. *See* Gov’t Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov’t Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). In its brief to this office, GTECH asserts that most of the submitted information is not public information subject to disclosure under the Public

Information Act (the "Act"). We have considered all of the submitted arguments and reviewed the information at issue.¹

Section 552.021 of the Government Code provides for public access to "public information." Section 552.002 of the Government Code defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." Gov't Code § 552.002(a). Thus, information that is collected, assembled, or maintained by a third party may be subject to disclosure under chapter 552 of the Government Code if a governmental body owns or has a right of access to the information. *See* Open Records Decision No. 462 (1987); *cf.* Open Records Decision No. 499 (1988) (relevant facts in determining whether information held by consultant is subject to the Act are whether: 1) information relates to governmental body's official business; 2) consultant acts as agent of governmental body in collecting information; and 3) governmental body has or is entitled to access to information). Where a third party has prepared information on behalf of a governmental body, the information is subject to the Act, even though it is not in the governmental body's custody. Open Records Decision No. 558 (1990). Moreover, if a governmental entity employs an agent to carry out a task that otherwise would have been performed by the entity itself, information relating to that task that has been assembled or maintained by the agent is subject to disclosure. Open Records Decision No. 518 (1989).

In this instance, GTECH asserts that most of the submitted documents do not meet the definition of "public information." The documents at issue are Exhibits C, D, and E, which consist of GTECH's shipping records, "pick 'n pack" list, warehouse procedures and shipping papers for the month of June. GTECH asserts that the company was not acting as an agent or on behalf of the commission when it created these records, that the records "are not documents specifically requested or required by [the commission]," and that the records "are maintained by GTECH for its own operational purposes." However, the records at issue are not records of GTECH's business operations in general. Instead, they deal solely with GTECH's distribution and shipping of scratch-off lottery tickets on behalf of the commission. Because this information appears to have been created in furtherance of GTECH's performance of services for and on behalf of the commission, we believe the records were created "for" the commission. In addition, GTECH acknowledges that the commission has a right of access to this information. Accordingly, we conclude that Exhibits C, D, and E meet the definition of "public information" under the Act. We will therefore address the commission's arguments against disclosure.

¹We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

The commission asserts that all of the submitted information is confidential by law. Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses statutory confidentiality provisions such as section 466.022 of the Government Code, which provides in part that

the following information is confidential and is exempt from disclosure:

- (1) security plans and procedures of the commission designed to ensure the integrity and security of the operation of the lottery; [and]
- (2) information of a nature that is designed to ensure the integrity and security of the selection of winning tickets or numbers in the lottery, other than information describing the general procedures for selecting winning tickets or numbers[.]

Gov’t Code § 466.022(b)(1)-(2). The commission claims that Exhibits B, C, D, and E are confidential under section 466.022. You inform us that Captain James Sigler of the commission’s Security Division is of the opinion that release of the submitted information “would compromise the integrity and security of the lottery tickets and the validation of winning tickets.” Based on your representations, we conclude that the submitted information is confidential under section 466.022 of the Government Code. Therefore, the commission must withhold Exhibits B, C, D, and E under section 552.101 of the Government Code as information made confidential by law.

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

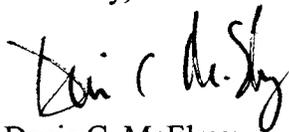
governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/seg

Ref: ID# 168518

Enc. Submitted documents

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