



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 19, 2006

Mr. Anthony J. Sadberry
Executive Director
Texas Lottery Commission
P. O. Box 16630
Austin, Texas 78761-6630

OR2006-14942

Dear Mr. Sadberry:

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# 267348.

The Texas Lottery Commission (the "commission") received a request for the claim form, legal papers, and the front side of the lottery ticket for specific lottery wins.¹ You state that you have provided the claim forms and the front side of the lottery tickets to the requestor, but request a decision as to whether the remaining information may be excepted from disclosure under section 552.101 of the Government Code. You also state that the remaining information may implicate the proprietary interests of third parties. Accordingly, you inform us, and provide documentation showing, that you notified LGroup Managed Trust ("LGroup") and Our Aurora Capital, Ltd. ("Aurora") of the request and of their right to submit arguments to this office as to why their information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have reviewed the submitted information. We have also

¹We note that the requestor clarified a portion of her request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

considered the comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

You inform us that some of the requested information is the subject of a previous request for a ruling, in response to which this office issued Open Records Letter No. 2006-09177 (2006). In that ruling information pertaining to AB Revocable Living Trust was found to be confidential pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. You do not indicate that there has been any change in the law, facts, and circumstances on which the previous ruling was based. Therefore, the commission must continue to rely on Open Records Letter No. 2006-09177 with respect to the responsive information that is the subject of the previous ruling. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 6-7 (2001) (listing elements of first type of previous determination under Gov't Code § 552.301(a)).

We now address the information that was not the subject of the previous ruling. Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses the doctrine of common-law privacy. Gov't Code § 552.101. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has found that information that reflects an individual's personal financial decisions and is not related to a financial transaction between the individual and a governmental body is generally excepted from disclosure under common-law privacy. Open Records Decision Nos. 600 (1992) (public employee's withholding allowance certificate, designation of beneficiary of employee's retirement benefits, direct deposit authorization, and employee's decisions regarding voluntary benefits programs, among others, protected under common-law privacy), 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history protected under common-law privacy). Upon review, we conclude that the information pertaining to LGroup reflects the trustor's personal financial decision and does not involve a financial transaction between him and a governmental body. Furthermore, we conclude that portions of the information pertaining to Aurora, which we have marked, reflect the individual member-investors' personal financial decisions and do not involve a financial transaction between them and a governmental body. Accordingly, the commission must withhold this information, which we have marked, pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. We note, however, that the commission has failed to demonstrate how any portion of the remaining submitted information constitutes highly intimate or embarrassing information for the purposes of common-law privacy. Thus, none of the remaining submitted information may be withheld on this basis.

We note that section 552.305 of the Government Code allows an interested third-party ten business days from the date of its receipt of the governmental body's notice to submit its

reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). However, as of the date of this letter, we have not received arguments from LGroup or Aurora for withholding the submitted information. Therefore, we have no basis to conclude that the release of any of this information would harm their proprietary interests. *See id.* § 552.110(b); Open Records Decision Nos. 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret). Accordingly, we conclude that the commission may not withhold any portion of the remaining information on the basis of any proprietary interest that LGroup or Aurora may have in the information.

In summary, the information pertaining to LGroup and the marked information pertaining to Aurora, is excepted from disclosure under section 552.101 of the Government Code in conjunction with the common-law privacy. The remaining information must be released.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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).

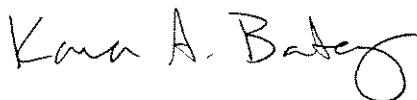
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

body. *Id.* § 552.321(a); *Texas Dep't of Pub. 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 Office of the Attorney General 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,



Kara A. Batey
Assistant Attorney General
Open Records Division

KAB/krl

Ref: ID# 267348

Enc. Submitted documents

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