



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 29, 2007

Ms. Charla Ann King
Executive Secretary
Texas Racing Commission
P.O. Box 12080
Austin, Texas 78711-2080

OR2007-06672

Dear Ms. King:

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# 279546.

The Texas Racing Commission (the "commission") received a request for all information pertaining to the application of Valle de los Tesoros, Ltd. ("Tesoros") for a racetrack license in Hidalgo County since January 10, 2007. You state that some of the requested information has been released, but claim that the submitted information is not subject to the Act. We have considered your arguments and reviewed the submitted information. We have also considered comments submitted by an attorney for Tesoros. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Texas Revised Civil Statutes Article 179e (the "The Texas Racing Act") provides for the regulation and control of horse and greyhound racing in Texas. *See* V.T.C.S. art. 179e, § 1.02. Section 6.03 of the Texas Racing Act regulates the application process for a racetrack license and provides in relevant part the following:

(a) The commission shall require each applicant for an original racetrack license to pay the required application fee and to submit an application, on a form prescribed by the commission, containing the following information:

...

(11) a copy of each management, concession, and totalisator contract dealing with the proposed license at the proposed location in which the applicant has an interest for inspection and review by the commission; the applicant or licensee shall advise the commission

of any change in any management, concession, or totalisator contract; all management, concession, and totalisator contracts must have prior approval of the commission; the same fingerprint, criminal records history, and other information required of license applicants pursuant to Sections 5.03 and 5.04 and Subdivisions (1) through (3) of this subsection shall be required of proposed totalisator firms, concessionaires, and managers and management firms[.]

...

(b) When the commission receives a plan for the security of a racetrack facility, or a copy of a management, concession, or totalisator contract for review under Subdivision (11) of Subsection (a) of this section, the commission shall review the contract or security plan in an executive session. Documents submitted to the commission under this section by an applicant are subject to discovery in a suit brought under [the Texas Racing] Act but are not public records and are not subject to Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).¹

Id. § 6.03(a)(11), (b). Pursuant to section 6.06 of the Texas Racing Act, the commission has adopted section 309.3 of title 16 of the Texas Administrative Code, which pertains to the application procedure for a racetrack license. *See id.* § 6.06(a) (commission shall adopt rules relating to license applications). Section 309.3(d) pertains to the commission's review of racetrack license applications and provides in relevant part the following:

(1) Not later than the 15th day after the last day of an application period, the executive secretary shall review each application submitted to determine whether the application contains all the required information.

(2) If the executive secretary determines that the application does not contain all the required information, the executive secretary shall notify the applicant in writing and state the nature of the deficiency in the application. The applicant shall submit the documents necessary to complete the application within 30 days from the date the applicant is notified of the deficiency. If the applicant fails to submit the requested documents on or before the 30th day, the Commission may elect to not consider the application.

16 T.A.C. § 309.3(d)(1)-(2). Section 309.3(e) also provides in relevant part the following: "After a racetrack application has been filed, the applicant may not amend the application except . . . as required by the Commission or the Commission staff to clarify information contained in the application." *Id.* § 309.3(e)(2)(B).

¹Article 6252-17a is the predecessor to the Act.

You inform us that Tesoros submitted an application to the commission for an original racetrack license pursuant to section 6.03. You indicate that the commission reviewed the application in an executive session and requested clarification of twenty-eight specific aspects of the application, of which ten related to Tesoros's security plan, totalisator agreement, management agreement, and concession agreement. *See id.* § 3.09(3)(d)(2); *see also id.* § 309.162(a) (commission must approve contract for management, concession, or totalisator services); V.T.C.S. art. 179e, § 6.03(a)(11), (b). In response, Tesoros submitted documents consisting of the commission's ten requests for clarification and Tesoros's answers, *see* 16 T.A.C. § 3.09(d)(2), (e)(2)(B), the information at issue in this ruling. Based on your representations and our review of the submitted information, we agree that the submitted information consists of documents submitted to the commission under section 6.03(b) of the Texas Racing Act by an applicant; therefore, the submitted information is not subject to the Act.² *See* V.T.C.S. art. 179e, § 6.03(b); 16 T.A.C. § 301.01(b)(4) (for purposes of Texas Racing Act, "application documents" means "documents submitted by an applicant for a license in support of the application").

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).

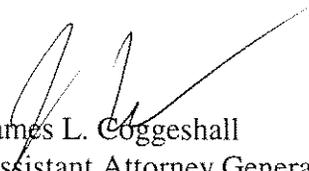
²As our ruling is dispositive, we do not address Tesoros's arguments for exception of the submitted information.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/jb

Ref: ID# 279546

Enc. Submitted documents

c: Mr. Meghan Griffiths
Andrews & Kurth, L.L.P.
111 Congress Avenue, Suite 1700
Austin, Texas 78701
(w/o enclosures)

Mr. William J. Moltz
Moltz, Morton & O'Toole, L.L.P.
The LittleField Building
106 East 6th Street, Suite 700
Austin, Texas 78701
(w/o enclosures)