



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 11, 2008

Ms. Pamela Smith
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2008-07952

Dear Ms. Smith:

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# 314324.

The Texas Department of Public Safety (the "department") received a request for any complaints filed against two named individuals and Aces Wired, Inc. from July 1, 2007 through April 9, 2008, and any correspondence concerning two named individuals and Aces Wired, Inc. from July 1, 2007 through April 9, 2008. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Section 552.101 excepts from required public disclosure "information that is confidential by law, either constitutional, statutory, or by judicial decision." Accordingly, it encompasses confidentiality provisions such as section 2.16 of article 179e of Vernon's Civil Statutes. Article 179e, the "Texas Racing Act," regulates horse racing and greyhound racing in Texas. Section 2.16 states in relevant part:

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.

Except as otherwise provided by this Act, the files, records, information, compilations, documents, photographs, reports, summaries, and reviews of information and related matters that are collected, retained, or compiled by the Department of Public Safety in the discharge of its duties under this Act are confidential and are not subject to public disclosure, but are subject to discovery by a person that is the subject of the files, records, information, compilations, documents, photographs, reports, summaries, and reviews of information and related matters that are collected, retained, or compiled by the Department of Public Safety in the discharge of its duties under this Act.

V.T.C.S. art. 179e, § 2.16(a). You explain that as the agency responsible for conducting background investigations on persons seeking racetrack licenses from the Texas Racing Commission, the department collected the requested information pursuant to such a background investigation. *See* V.T.C.S. art. 179e, § 6.031. You further state that the requestor is not a person who is the subject of the responsive records nor is the requestor acting on the behalf of such a person. Based on these representations, we agree that the requested information is confidential under section 552.101 of the Government Code in conjunction with section 2.16 of article 179e of Vernon's Civil Statutes. Therefore, the department must withhold the requested information.²

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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,

²As our ruling is dispositive, we need not address your remaining argument against disclosure.

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 challenge 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,



Jessica J. Maloney
Assistant Attorney General
Open Records Division

JJM/jh

Ref: ID# 314324

Enc. Submitted documents

c: Ms. Elizabeth M. Branch
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(w/o enclosures)