



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 16, 2008

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

OR2008-12751

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# 320446.

The Texas Lottery Commission (the "commission") received a request for three categories of information pertaining to GTECH Corporation ("GTECH") and its performance on GTECH's contracts with the commission.<sup>1</sup> You state that a portion of the requested information will be released to the requestor. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.107, 552.108, 552.111, 552.136, 552.137, and 552.139 of the Government Code. You also state that release of this information may implicate the proprietary interests of GTECH. Accordingly, you inform us, and provide documentation showing, that you notified GTECH of the request and of its right to submit arguments to this office as to why its information should not be released. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have received arguments from the attorneys for GTECH. *Id.* We have considered the submitted arguments and have reviewed the submitted information.<sup>2</sup>

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<sup>1</sup>You state that the commission sought and received clarification from the requestor. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear, governmental body may ask requestor to clarify or narrow request).

<sup>2</sup>We 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.

Initially, we address the commission's contention that a portion of the submitted information, which it has marked, may be subject to previous rulings by this office. In Open Records Letter No. 2002-0019 (2002), we ruled that the commission must withhold most of GTECH's 2001 proposal under section 552.110(a). In Open Records Letter No. 2003-2742 (2003), we ruled that section 10.7 of GTECH's contract with the commission must be withheld under section 552.110(a). However, the commission has informed us that the information it has marked in the submitted information is not precisely the same information we ruled upon in the previous rulings. Thus, Open Records Letter Nos. 2002-0019 and 2003-2742 are not previous determinations and the marked information may only be withheld if it falls under an exception to disclosure. *See* Open Records Decision No. 673 (2001) (requiring the information be precisely same information as was addressed in prior attorney general ruling for first type of previous determination to exist).

Next, we must address the commission's obligations under section 552.301 of the Government Code. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(e) states, within fifteen business days of receiving the request, the governmental body must submit to this office (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e)(1)(A)-(D). The commission received the request for information on June 6, 2008. You state and your submitted correspondence with the requestor indicates that you sought clarification on June 11, 2008 and received clarification from the requestor on June 16, 2008. *See id.* § 552.222(b); Open Records Decision No. 663 at 5 (1999) (fifteen business-day deadline tolled while governmental body awaits clarification). In addition, you inform this office that the commission was closed on June 19, 2008. Thus your deadline to provide this office with a copy of the specific information requested or representative samples was July 3, 2008. The commission timely submitted a box of responsive information to this office on July 3, 2008. However, the commission subsequently submitted four additional boxes of information to this office on July 22, 2008. Consequently, we conclude that the commission failed to comply with the requirements of section 552.301 of the Government Code with respect to the information submitted on July 22, 2008.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records

Decision No. 150 (1977). You claim that the addresses of prize winners are confidential under section 552.101 of the Government Code in conjunction with section 466.022(b)(3) of the Government Code. Because the application of section 552.101 can provide a compelling reason for non-disclosure under section 552.302, we will consider your claim under section 466.022(b)(3) for the untimely submitted documents. In addition, because the proprietary interests of GTECH are at stake, we will address GTECH's arguments against disclosure of the untimely submitted documents.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. Section 466.022(b) of the Government Code provides that the following information is confidential and exempt from disclosure:

- (1) security plans and procedures of the commission designed to ensure the integrity and security of the operation of the lottery;
- (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; and
- (3) the street address and telephone number of a prize winner, if the prize winner has not consented to the release of the information.

*Id.* § 466.022(b). You state that release of the information you have marked under section 466.022 "would compromise the lottery games and threaten the integrity and security of the lottery." You further state that release of this information "would assist computer hackers in infiltrating the Commission's computer networks." Based upon your representations and our review of the documents at issue, we conclude that the commission must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 466.022(b) of the Government Code.<sup>3</sup>

The commission also represents to this office that the addresses of prize winners, which you have marked, are subject to section 466.022(b)(3). You do not inform us that the prize winners at issue have consented to the release of their addresses. Accordingly, the commission must withhold the information you have marked under section 552.101 in conjunction with section 466.022(b)(3), unless the owners have consented to their release.

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<sup>3</sup>As our ruling is dispositive as to the information marked under this provision, we do not address the commission's claim under 552.139.

Next, you assert that the e-mails you have marked are excepted from disclosure under section 552.107(1) of the Government Code, which protects information coming within the attorney-client privilege. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate that the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made "for the purpose of facilitating the rendition of professional legal services" to the client governmental body. TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *In re Tex. Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in a capacity other than that of attorney). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. Thus, the mere fact that a communication involves an attorney for the government does not demonstrate this element. Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. TEX. R. EVID. 503(b)(1). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a *confidential* communication, *id.*, meaning it was "not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication." *Id.* 503(a)(5).

Whether a communication meets this definition depends on the intent of the parties involved at the time the information was communicated. *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, no writ). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain that the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You state that the e-mails you have marked consist of communications between attorneys for the commission and commission staff that were made for the purpose of facilitating the rendition of professional legal services to the commission. You have identified the parties to the communications. You also state that the communications were intended to be and remain confidential. Based upon your representations and our review of the information at issue, we conclude that the commission may withhold the information you have marked under section 552.107(1) of the Government Code.

Next, you assert that two investigative reports pertaining to the same criminal investigation and the related information you have marked are excepted from disclosure under section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) excepts from disclosure information held by a law enforcement agency or prosecutor concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A law enforcement agency claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). We note that this office has determined that the commission is a law enforcement agency for the purposes of section 552.108. *See id.* §§ 466.019, .020. You state that the criminal investigation at issue was concluded and that the charges were dismissed. Therefore, based on your representations and our review, we find that section 552.108(a)(2) is applicable in this instance.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, with the exception of the basic information, you may withhold from disclosure the information you have marked under section 552.108(a)(2).

Next, you contend that an e-mail you have marked is excepted from disclosure under section 552.111 of the Government Code. Section 552.111 excepts from disclosure “an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.” Gov't Code § 552.111. This exception encompasses the deliberative process privilege. *See* Open Records Decision No. 615 at 2 (1993). The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. *See Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, no writ); Open Records Decision No. 538 at 1-2 (1990). In Open Records Decision No. 615 (1993), this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ). We determined that section 552.111 excepts from disclosure only those internal communications that consist of advice, recommendations, and opinions that reflect the policymaking processes of the governmental body. *See* Open Records Decision No. 615 at 5. A governmental body's policymaking functions do not encompass routine internal administrative or personnel matters, and disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. *Id.*; *see also City of Garland v. The Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (Gov't Code § 552.111 not applicable to personnel-related communications that did not involve policymaking). A governmental body's policymaking functions do include administrative and personnel matters of broad scope that affect the governmental body's policy mission. *See*

Open Records Decision No. 631 at 3 (1995). Moreover, section 552.111 does not protect facts and written observations of facts and events that are severable from advice, opinions, and recommendations. *See* ORD No. 615 at 5. But if factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make severance of the factual data impractical, the factual information also may be withheld under section 552.111. *See* Open Records Decision No. 313 at 3 (1982). In this instance you seek to withhold an e-mail between commission employees that you state consists of advice, recommendations, and opinions that reflect the policymaking processes of the commission. Upon review of your arguments and the marked information, we agree that the commission may withhold the marked e-mail under section 552.111 of the Government Code.

Next, you contend that portions of the submitted information are excepted from disclosure under section 552.136 of the Government Code. Section 552.136 states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b). We agree that the bank account numbers, routing numbers, and credit card numbers in the submitted representative sample are access device numbers excepted from disclosure under section 552.136. Accordingly, the commission must withhold these numbers which we have marked in the submitted representative sample under section 552.136 of the Government Code. However, we note that you have also marked additional information under section 552.136. You have not provided any arguments explaining, nor can we discern, how any of the additional information you have marked constitutes access device numbers. Therefore, the commission has failed to demonstrate that the additional information it has marked is excepted from disclosure under section 552.136. As you raise no further arguments against the disclosure of the remaining information you have marked under section 552.136, it must be released.

Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). Section 552.137(c) excludes the e-mail addresses of a person who has a contractual relationship with a governmental body or its agent. *Id.* § 552.137(c)(1). Section 552.137 is also not applicable to an e-mail address that a governmental entity maintains for one of its officials or employees. We note that most of the e-mail addresses you have marked are the e-mail addresses of employees of GTECH, a contractor for the commission, which are specifically excluded under subsection (c)(1). You have also marked some e-mail addresses of commission employees. These types of e-mail addresses may not be withheld under section 552.137. However, we have marked the personal e-mail addresses in the submitted representative sample that must be withheld under section 552.137, unless the owners of these e-mail addresses consent to release of their release.

We note that the submitted information contains telephone numbers of officials or employees of the commission that may be excepted from disclosure under section 552.117(a)(1) of the Government Code.<sup>4</sup> Section 552.117(a)(1) excepts from public disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code. *Id.* §552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who did not timely request confidentiality under section 552.024 for their information. We note that section 552.117 is applicable to an official's or employee's cellular telephone number only if the cellular telephone service is paid for by the official or employee with his or her own funds. *See* Open Records Decision No. 670 at 6 (2001). Accordingly, to the extent that the submitted information contains employee telephone numbers that are home telephone numbers or are from a cellular telephone service not paid for by the commission, and the owner of the telephone number timely elected confidentiality under section 552.024, the commission must withhold them under section 552.117(a)(1). If the employees at issue did not timely elect confidentiality for their information or if any of the numbers are from a cellular telephone service paid for by the commission, then their telephone numbers must be released.

We note the records contain the home addresses and telephone numbers of licensed peace officers. Section 552.117(a)(2) excepts from public disclosure a peace officer's home address and telephone number, social security number, and family member information regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code.<sup>5</sup> Gov't Code § 552.117(a)(2). Section 552.117(a)(2) only applies to records that a governmental body is holding in an employment capacity. Thus, to the extent these licensed peace officers are former or current employees of the commission, the commission must withhold their home addresses and telephone numbers under section 552.117(a)(2). If these licensed peace officers are not former or current employees of the commission, their home addresses and telephone numbers may not be withheld under section 552.117(a)(2).

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<sup>4</sup>The Office of the Attorney General will raise a mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>5</sup>"Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

If the licensed peace officers were not employed by the commission, their home addresses and telephone numbers may, however, be subject to section 552.1175. Section 552.1175 provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure;

...

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a), (b). If the licensed peace officers at issue were not employed by the commission, the commission must only withhold their home addresses and telephone numbers if those licensed peace officers elect to restrict access to their information in accordance with section 552.1175(b). If no election is made, the commission may not withhold those officers' home addresses and telephone numbers under section 552.1175.

We now address GTECH's arguments that some of the remaining information is excepted from disclosure under section 552.110 of the Government Code. Section 552.110 protects: (1) trade secrets, and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See* Gov't Code § 552.110(a), (b).

Section 552.110(a) protects trade secrets obtained from a person and privileged or confidential by statute or judicial decision. Gov't Code § 552.110(a). The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts. *Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex. 1957); *see also* Open Records Decision No. 552 at 2 (1990). Section 757 provides that a trade secret is:

any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage

over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to single or ephemeral events in the conduct of the business . . . . A trade secret is a process or device for continuous use in the operation of the business . . . . [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also Huffines*, 314 S.W.2d at 776. In determining whether particular information constitutes a trade secret, this office considers the Restatement's definition of trade secret as well as the Restatement's list of six trade secret factors.<sup>6</sup> RESTATEMENT OF TORTS § 757 cmt. b (1939). This office must accept a claim that information subject to the Act is excepted as a trade secret if a *prima facie* case for the exception is made and no argument is submitted that rebuts the claim as a matter of law. *See* ORD 552 at 5. However, we cannot conclude that section 552.110(a) is applicable unless it has been shown that the information meets the definition of a trade secret and the necessary factors have been demonstrated to establish a trade secret claim. Open Records Decision No. 402 (1983).

Section 552.110(b) protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov’t Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing,

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<sup>6</sup>The Restatement of Torts lists the following six factors as indicia of whether information constitutes a trade secret:

- (1) the extent to which the information is known outside of [the company];
- (2) the extent to which it is known by employees and other involved in [the company's] business;
- (3) the extent of measures taken by [the company] to guard the secrecy of the information;
- (4) the value of the information to [the company] and [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing the information;
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.* § 552.110(b); *see also* Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

In this instance, GTECH argues that some of the submitted information, encompassing over 10,000 pages of documents, is excepted from disclosure under both section 552.110(a) and (b). Most of the information at issue appears to be maintained by the commission in its liquidated damages files. We note that, for the most part, each liquidated damages file contains substantially the same types of form documents, although the information in the form documents differs from file to file. We also note that GTECH submitted to this office on August 15, 2008, a box of documents and states that it does not object to the release of this information. This information consists of the same types of form documents contained in the information submitted by the commission. Thus, although GTECH states that it was not given the opportunity to copy the commission's documents, GTECH was aware of the general types of information submitted by the commission through its inspection of the submitted information at the commission offices and from similar information it separately maintains. However, GTECH only generally refers to several categories of information, including Texas incident reports, GTECH hardware, processes, protocol, routines, products, log output excerpts, system architecture, human resources information, security plans and procedures, and results of GTECH's evaluations, descriptions, and analyses. GTECH does not inform this office where any of this information is located in the submitted information, nor can we discern from our review that any of these categories of information are contained in the submitted information.

We find, however, that GTECH has established a *prima facie* case that a portion of the submitted information pertaining to its vendor list and the prices paid to vendors constitutes trade secrets. Therefore, this information, which we have marked, must be withheld under section 552.110(a). We note that the vast majority of the remaining information deals with GTECH's performance under its contract with the commission. The information pertains to particular incidents that occurred, liquidated damages that were imposed, and credits that were allowed pursuant to GTECH's contract with the commission. This type of information, relating to specific incidents in a particular contract is generally not trade secret because it is "simply information as to single or ephemeral events in the conduct of the business," rather than "a process or device for continuous use in the operation of the business." RESTATEMENT OF TORTS § 757 cmt. b (1939); *see Huffines*, 314 S.W.2d at 776; Open Records Decision Nos. 319 at 3, 306 at 3 (1982). Thus, we find that GTECH has failed to demonstrate that any portion of the remaining information meets the definition of a trade secret, nor has it demonstrated the necessary factors for any specific portion of the remaining information to establish a trade secret claim. *See* Restatement. Accordingly, we determine that no portion of the remaining information is excepted from disclosure under section 552.110(a) of the Government Code.

Under section 552.110(b), GTECH generally argues that release of the information at issue would cause it substantial competitive harm because the requestor is a competitor and the information would give the requestor an unfair advantage with regard to future contracts. GTECH, however, only makes a generalized allegation and does not provide this office with specific factual evidence that substantial competitive injury would result from release of the information at issue. Thus, GTECH has not established that section 552.110(b) is applicable to any of the remaining information. *See* ORD 661 (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue). In addition, the terms of a contract with a governmental body are generally not excepted from public disclosure. *See* Gov't Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision No. 541 at 8 (public has interest in knowing terms of contract with state agency). We therefore conclude that none of the submitted information is excepted from disclosure under section 552.110(b).

We note that some of the submitted information appears to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, the commission must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 466.022(b)(1) and (2) of the Government Code. Unless the owners have consented to their release, the commission must also withhold the prize winner addresses you have marked under section 552.101 of the Government Code in conjunction with section 466.022(b)(3) of the Government Code. The commission may withhold the information you have marked under sections 552.107 and 552.111 of the Government Code. With the exception of basic information, the commission may withhold the information you have marked under section 552.108(a)(2) of the Government Code. The commission must withhold the account numbers we have marked in the representative sample under section 552.136 of the Government Code. Unless the owners of the e-mail addresses consent to their release, the commission must withhold the personal e-mail addresses we have marked in the submitted representative sample under section 552.137 of the Government Code. To the extent that the submitted information contains employee telephone numbers that are home telephone numbers or are from a cellular telephone service not paid for by the commission, and the owner of the telephone number timely elected confidentiality under section 552.024, the commission must withhold them under section 552.117(a)(1) of the Government Code. To the extent the licensed peace

officers are former or current employees of the commission, the commission must withhold their home addresses and telephone numbers under section 552.117(a)(2) of the Government Code. If the licensed peace officers at issue were not employed by the commission, the commission must withhold their home addresses and telephone numbers if those officers elect to restrict access to their information in accordance with section 552.1175(b) of the Government Code. The commission must withhold the information we have marked under section 552.110(a) of the Government Code. The remaining information must be released to the requestor in accordance with copyright law.<sup>7</sup>

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). If the governmental body does not file suit over 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 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).

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<sup>7</sup>We note the remaining information contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147.

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,



Laura E. Ream  
Assistant Attorney General  
Open Records Division

LER/jb

Ref: ID# 320446

Enc. Submitted documents

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