



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 29, 2009

Mr. Gary Grief
Deputy Executive Director
Texas Lottery Commission
P.O. Box 16630
Austin, Texas 78761-6630

OR2009-08934

Dear Mr. Grief:

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# 347744.

The Texas Lottery Commission (the "commission") received a request for "the license application of Star Bingo Supply, LLC[("Star Bingo"),] filed during the second half of 2008[, and] the denial letter . . . sent from the [c]ommission." You state that the commission has released some of the requested information to the requestor. You claim that some of the submitted information is excepted from disclosure under section 552.137 of the Government Code. You indicate that some of the submitted information may be excepted under sections 552.101 and 552.110 of the Government Code, but take no position as to whether this information is excepted under those sections. You also state, and provide documentation showing, that you notified Star Bingo, the interested third party, of the commission's receipt of the request for information and of the company's right to submit arguments to this office as to why the requested information should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the exception you claim and reviewed the submitted information.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why

the requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, Star Bingo has failed to submit comments to this office explaining how release of the requested information would affect the company's proprietary interests. Therefore, we have no basis to conclude Star Bingo has protected proprietary interests in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, 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), 542 at 3. Accordingly, the commission may not withhold any of the submitted information on the basis of any proprietary interest Star Bingo may have in the information.

Section 552.137 of the Government Code 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). Gov't Code § 552.137(a)-(c). You inform us that no member of the public has affirmatively consented to the release of the e-mail address contained in the submitted information. Accordingly, the commission must withhold the e-mail address you have marked under section 552.137 of the Government Code. The remaining submitted information must be released to the requestor.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 347744

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. David N. Reed
Meadows, Collier, Reed, Cousins & Blau, L.L.P.
Attorney for Star Bingo, L.L.C.
901 Main Street, Suite 3700
Dallas, Texas 75202
(w/o enclosures)