



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 11, 2011

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

OR2011-05004

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# 414282 (TLC File No. B-13766).

The Texas Lottery Commission (the "commission") received a request for three categories of information, seeking: documents found to be confidential by the Office of the Attorney General in a specified ruling; documents withheld from production by the commission to a named individual; and documents received by the commission from any other person or entity that relates to seven specified entities.¹ You state the commission has released some of the requested information. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted information contains court-filed documents. Section 552.022 of the Government Code provides for required public disclosure of "information that is also contained in a public court record[,] unless the information is expressly confidential under other law. Gov't Code § 552.022(a)(17). The Order Disposing of Gambling Proceeds, Findings of Fact, and Seizure Warrants for which you have submitted hard copies, and the Order Allowing Transfer of Seized Property, Search Warrants, Seizure Warrants, Court's Orders to Seal Search Warrant Affidavit, signed Return and Inventory documents, Agreed Order, Final Judgment, Judgment, Indictments, Written Plea and Admonishments, filed Appearance Bonds, Orders of Deferred Adjudication, Conditions of Community Supervision, Order of Transfer, Judgments of Conviction by Court-Waiver of Jury Trial, and Information

¹You indicate the requestor amended the third category in her request for information.

found in files on the submitted compact discs are subject to section 552.022(a)(17) and must be released unless they are expressly confidential under other law. *See id.* Although the commission raises section 552.108 of the Government Code on behalf of the Tarrant County Criminal District Attorney's Office (the "district attorney"), this section is a discretionary exception that protects a governmental body's interests and may be waived. *See Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (governmental body may waive statutory predecessor to section 552.108).* As such, section 552.108 does not constitute other law that makes information expressly confidential for the purposes of section 552.022. Therefore, the commission may not withhold these court-filed documents under section 552.108. However, we note portions of this information are subject to sections 552.101, 552.130, and 552.136 of the Government Code, which do constitute "other law" for the purposes of section 552.022; thus, we will consider these exceptions for the documents subject to section 552.022.² We will also consider your argument under section 552.108 for the submitted information that is not subject to section 552.022.

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, such as section 560.003 of the Government Code. Section 560.003 provides that "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." Gov't Code § 560.003; *see also id.* §§ 560.001(1) (defining "biometric identifier" to include fingerprints), .002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual's biometric identifier to another person unless individual consents to disclosure). Therefore, the commission must withhold the fingerprints in the documents subject to section 552.022 on the submitted compact discs under section 552.101 in conjunction with section 560.003 of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). We note, however, that section 552.130 does not encompass driver's license information of other states. Accordingly, we find the commission must withhold the Texas driver's license numbers found in the documents subject to section 552.022 on the submitted compact discs under section 552.130 of the Government Code.

Section 552.136 of the Government Code states, "Notwithstanding 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); *see also id.* § 552.136(a) (defining "access device"). Upon review, we find the

²The Office of the Attorney General will raise 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).*

commission must withhold the bank account numbers we have marked in the hard-copy documents subject to section 552.022, as well as the bank account numbers found in the documents subject to section 552.022 on the submitted compact discs under section 552.136 of the Government Code.

Next, we address your argument under section 552.108 of the Government Code for the information that is not subject to section 552.022. Section 552.108(a) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 may be invoked by any proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See Open Records Decision No. 474* at 4–5 (1987) (section 552.108 may be invoked by any proper custodian of information relating to pending investigation or prosecution of criminal conduct). You state, and provide documentation demonstrating, the district attorney objects to release of the information at issue. The district attorney states the information at issue relates to a pending criminal investigation and prosecution, for which charges were filed in the 213th District Court of Tarrant County. Based upon this representation and our review, we conclude that release of the information that is not subject to section 552.022 would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the information at issue.

We note, however, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186–88. Thus, with the exception of the basic front page offense and arrest information, the commission may withhold the information that is not subject to section 552.022 based on section 552.108(a)(1) of the Government Code.³

We note that the basic information in this instance contains one of the arrestee’s addresses, which may be subject to section 552.1175(b) of the Government Code. Section 552.1175 provides in part:

Information that relates to the home address, home telephone number, or social security number of [a peace officer as defined by article 2.12 of the

³As our ruling is dispositive, we need not address your remaining arguments under sections 552.108(a)(4), (b)(1), or (b)(3) of the Government Code for this information.

Code of Criminal Procedure], 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(b). Upon review, we find some of the basic information pertains to a peace officer that the commission does not hold in an employment context. Thus, to the extent this individual is a currently licensed peace officer who elects to restrict access to his information in accordance with section 552.1175(b), the commission must withhold his address under section 552.1175 of the Government Code. Conversely, if the peace officer at issue is not currently licensed or does not elect to restrict access to his information in accordance with section 552.1175(b), the commission may not withhold his address pursuant to section 552.1175 of the Government Code.

In summary: (1) the commission must withhold the fingerprints in the documents subject to section 552.022 on the submitted compact discs under section 552.101 in conjunction with section 560.003 of the Government Code; (2) the commission must withhold the Texas driver's license numbers found in the documents subject to section 552.022 on the submitted compact discs under section 552.130 of the Government Code; (3) the commission must withhold the bank account numbers we have marked in the hard-copy documents subject to section 552.022, as well as the bank account numbers found in the documents subject to section 552.022 on the submitted compact discs under section 552.136 of the Government Code; (4) with the exception of the basic front page offense and arrest information, the commission may withhold the information that is not subject to section 552.022 based on section 552.108(a)(1) of the Government Code; and (5) in releasing basic information, the commission must withhold the address subject to section 552.1175(b) of the Government Code, but only if the peace officer to whom it relates is currently licensed and makes a proper election under section 552.1175(b).⁴ The commission must release the remaining information.⁵

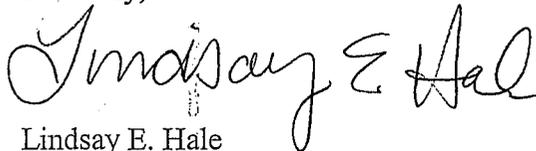
⁴We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including: a fingerprint under section 552.101 in conjunction with section 560.003 of the Government Code; a Texas driver's license number under section 552.130 of the Government Code; and bank account numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

⁵The information being released contains a social security number. We note 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. Gov't Code § 552.147(b).

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, toll free at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Lindsay E. Hale".

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/em

Ref: ID# 414282

Enc. Submitted documents

c: Requestor
(w/o enclosures)