



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 17, 2012

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

OR2012-07364

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# 454066 (TLC# L-15413).

The Texas Lottery Commission (the “commission”) received a request for information related to three specified requests for proposals. You claim that the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state release of this information may implicate the proprietary interests of GTECH Printing Corporation, Pollard Banknote, and Scientific Games International, Inc. (“Scientific Games”). Accordingly, you have notified these third parties of the request and of their right to submit arguments to this office as to why their information should not be released. *See* Gov’t Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); 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 comments from an attorney for Scientific Games. We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>1</sup>

Both the commission and Scientific Games argue that the submitted information is excepted from disclosure pursuant to section 552.104 of the Government Code. However, section 552.104 only protects the interests of a governmental body and does not protect the

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<sup>1</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.

interests of third parties. *See* Open Records Decision No. 592 (1991) (statutory predecessor to section 552.104 designed to protect interests of governmental body in competitive situation, and not interests of private parties submitting information to government). Thus, we will not consider Scientific Games's arguments under section 552.104. *See* ORD 592 at 8. However, we will address the commission's arguments under section 552.104 for the submitted information.

Section 552.104 of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. The purpose of section 552.104 is to protect a governmental body's interests in competitive bidding situations, including where the governmental body may wish to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 at 8 (1991) (statutory predecessor to section 552.104 designed to protect interests of governmental body). Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not except bids from disclosure after bidding is completed and the contract has been executed. *See* Open Records Decision No. 541 (1990).

You state the commission solicited bids for the three requests for proposals at issue in December of 2011. You further state all three requests for proposals are "currently in different stages of the procurement process" and that no final executed contracts have been awarded. You explain that "[u]nless and until contracts are awarded in each of these procurements, the [commission] will negotiate with apparent successful proposers," and that if these negotiations do not result in the execution of a contract, the commission may continue its negotiations with other proposers. You further state public disclosure of the information at issue "would adversely impact the [c]ommission's ability to negotiate and place the [c]ommission at a competitive disadvantage in its negotiations" and harm the commission's ability to negotiate a final agreement. Based on your representations and our review, we conclude the commission has demonstrated the applicability of section 552.104 to the requested information. Accordingly, we conclude the commission may withhold the submitted information under section 552.104 of the Government Code until such time as contracts for these requests for proposals have been executed.<sup>2</sup> *See* Open Records Decision No. 170 at 2 (1977) (release of bids while negotiation of proposed contract is in progress would necessarily result in an advantage to certain bidders at expense of others and could be detrimental to public interest in contract under negotiation).

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.

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<sup>2</sup>Because our ruling under section 552.104 is dispositive, we do not address Scientific Games's remaining arguments against disclosure.

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](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,



Vanessa Burgess  
Assistant Attorney General  
Open Records Division

VB/dls

Ref: ID# 454066

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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(w/o enclosures)

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