



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 26, 2013

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

OR2013-20617

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# 506850 (TLC File # L-17523).

The Texas Lottery Commission (the "commission") received a request for all e-mails and office memoranda between two named individuals for two specified months that pertain to the legacy prize payment account or administrative checks. You claim that some of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.111, and 552.116 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(a)(2). A governmental body 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)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). This office has determined the commission is a law enforcement agency. *See id.* §§ 466.019 (commission is authorized to enforce violations of lottery laws), .020 (commission is authorized to

maintain department of security staffed by commissioned peace officers or investigators). You state that the information you have marked pertains to a closed criminal investigation or prosecution that concluded in a result other than conviction or deferred adjudication. Thus, we conclude the commission may withhold the information you have marked under section 552.108(a)(2) of the Government Code.¹

Section 552.116 of the Government Code provides,

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a school district, a hospital district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from [required public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [public disclosure] by this section.

(b) In this section:

(1) "Audit" means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, the bylaws adopted by or other action of the governing board of a hospital district, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.

(2) "Audit working paper" includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

Id. § 552.116. You assert the information you have marked consists of audit working papers pertaining to an audit conducted by the commission's internal audit director. You state the

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure for this information.

audit was undertaken pursuant to the Texas Internal Auditing Act, chapter 2102 of the Government Code. *See id.* ch. 2102. You further state the audit report resulting from this investigation is available in its final form. Based on your representations and our review, we agree the information at issue constitutes audit working papers. Therefore, the commission may withhold the information you have marked under section 552.116 of the Government Code.²

In summary, the commission may withhold the information you have marked under sections 552.108(a)(2) and 552.116 of the Government Code. The remaining information must be released.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/tch

Ref: ID# 506850

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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