



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 20, 2015

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

OR2015-09843

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# 564285 (TLC File# B-19714, B-19704, B-19727).

The Texas Lottery Commission (the "commission") received three requests from two different requestors for information pertaining to specified investigations and investigations of a named bingo hall. You state you will release some information. You also state you will withhold certain information under sections 552.130, 552.136, and 552.147 of the Government Code and pursuant to Open Records Decision No. 684 (2009).<sup>1</sup> You claim the remaining submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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<sup>1</sup>Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.136 of the Government Code permits a governmental body to withhold the information described in section 552.136(b) without the necessity of seeking a decision from this office. *See id.* § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public, under section 552.137 of the Government Code, without the necessity of requesting an attorney general opinion. 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. *Id.* § 552.147(b).

Section 552.108(a)(1) 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See id.* §§ 552.108(a)(1), .301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). This office has determined that the commission is a law enforcement agency. *See* Gov’t Code §§ 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 the submitted information at issue directly relates to an open criminal investigation by the commission’s Charitable Bingo Operations Division of alleged violations of the Bingo Enabling Act. You state the potential violations being investigated carry criminal penalties pursuant to section 2001.554 of the Occupations Code. *See* Occ. Code § 2001.554(b). Based upon your representations and our review, we conclude release of the information at issue 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 submitted information.

We note, however, section 552.108 of the Government Code 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* and includes, among other items, the identification and description of the complainant. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing the types of information considered to be basic information). Thus, with the exception of the basic information, the commission may withhold the submitted information under section 552.108(a)(1) of the Government Code.

You claim some of the basic information is confidential under section 552.101 of the Government Code. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information protected by the common-law informer’s privilege, which has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law enforcement authority, provided the subject of the information does not already know the informer’s identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report

violations of statutes with civil or criminal penalties to “administrative officials having a duty of inspection or of law enforcement within their particular spheres.” Open Records Decision No. 279 at 2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law* § 2374, at 767 (J. McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. See Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5. The privilege excepts the informer’s statement only to the extent necessary to protect that informer’s identity. Open Records Decision No. 549 at 5 (1990).

You state the submitted complaint information reveals the identities of individuals who reported possible violations of Bingo Enabling Act to commission officials charged with enforcement of the Bingo Enabling Act. You state these violations are punishable by criminal penalties. You do not indicate, nor does it appear, the subjects of the complaints know the identities of the reporting parties. Therefore, based on your representations and our review, we conclude the commission may withhold the reporting parties’ identifying information, which you have marked, under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege.

In summary, with the exception of basic information, which must be released, the commission may withhold the submitted information under section 552.108(a)(1) of the Government Code. However, in releasing basic information, the commission may also withhold the information you have marked under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege.

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](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,



Mili Gosar  
Assistant Attorney General  
Open Records Division

MG/akg

Ref: ID# 564285

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)