



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 28, 2015

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

OR2015-10357

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# 571352 (TLC File # B-19911).

The Texas Lottery Commission (the "commission") received a request for the name of a specified individual. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.137 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor seeks only the name of a specified individual. You have submitted a document that contains information beyond this specific piece of information. Thus, the portions of the submitted document that do not consist of the information requested are not responsive to the present request. This ruling does not address the public availability

¹Although you do not raise section 552.137 of the Government Code in your brief, we understand you to raise this exception based on your markings.

of any information that is not responsive to the request and the commission is not required to release that information in response to the request.²

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. You raise section 552.101 in conjunction with the common-law informer’s privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer’s 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. *See Open Records Decision No. 208 at 1-2 (1978)*. The informer’s 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 1-2 (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 (1988)*. However, individuals who provide information in the course of an investigation are not informants for the purposes of claiming the informer’s privilege. 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)*. We note the informer’s privilege does not apply where the informant’s identity is known to the individual who is the subject of the complaint. *See Open Records Decision No. 208 at 1-2 (1978)*.

You state the responsive information identifies an individual who reported possible violations of the Bingo Enabling Act. You explain the individual reported the possible violations to commission officials charged with enforcement of the Bingo Enabling Act. You also state these violations are punishable by civil and criminal penalties. We have no indication the subject of the complaint knows the identity of the informer. Based upon your representations and our review, we conclude the commission has demonstrated the applicability of the common-law informer’s privilege to the information at issue. Therefore, the commission may withhold the responsive information 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.

²As we are able to make this determination, we need not consider your arguments against disclosure of the non-responsive information.

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,

A handwritten signature in black ink, appearing to read "N. A. Ybarra". The signature is fluid and cursive, with the first name "N." and last name "Ybarra" clearly distinguishable.

Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/cbz

Ref: ID# 571352

Enc. Submitted documents

c: Requestor
(w/o enclosures)