



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 1, 2017

Mr. Mark Fenner  
General Counsel  
Texas Racing Commission  
P.O. Box 12080  
Austin, Texas 78711-2080

OR2017-20083

Dear Mr. Fenner:

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# 673846.

The Texas Racing Commission (the "commission") received a request for a specified investigation report and the commission's plan of action in response to the specified report. You state you have no information responsive to a portion of the request.<sup>1</sup> You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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. Section 552.101 encompasses section 2.15 of the Texas Racing Act, which regulates horse racing and greyhound racing in Texas. Section 2.15 provides in part:

- (a) All records of the commission that are not made confidential by other law are open to inspection by the public during regular office hours. All applications for a license under [the Texas Racing] Act shall be maintained

---

<sup>1</sup>The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

by the commission and shall be available for public inspection during regular office hours.

(b) The contents of the investigatory files of the commission are not public records and are confidential except in a criminal proceeding, in a hearing conducted by the commission, on court order, or with the consent of the party being investigated.

V.T.C.S. art. 179e, § 2.15(a), (b). Section 2.15(b) makes investigative files of the commission confidential. *See* Open Records Decision Nos. 567 (1990), 548 (1990). You state the submitted information was obtained through the commission's investigative process. We understand none of the exceptions to section 2.15 apply in this instance. Accordingly, we conclude the commission must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 2.15 of the Texas Racing Act.

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,



Sidney M. Pounds  
Assistant Attorney General  
Open Records Division

SMP/sdk

Ref: ID# 673846

Enc. Submitted documents

c: Requestor  
(w/o enclosures)