



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 18, 2019

Ms. Deanne Rienstra
Special Counsel
Texas Lottery Commission
P. O. Box 16630
Austin, Texas 78761-6630

OR2019-10432

Dear Ms. Rienstra:

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# 760212 (File #B-24931).

The Texas Lottery Commission (the "commission") received a request for specified information pertaining to three specified games. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of American Games, Inc. ("American"); Arrow International, Inc. ("Arrow"); and International Gamco, Inc. ("International"). Accordingly, you state, and provide documentation showing, you notified the third parties of the request for information and of their right to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received arguments from American, Arrow, and International. We have considered the submitted arguments and reviewed the submitted information.

Arrow asserts its information, and American and International assert portions of their information, are protected under section 552.104 of the Government Code. Section 552.104(a) excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). A private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The "test under section

552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Id.* at 841. Arrow, American, and International state they have competitors, which includes the requestor. In addition, Arrow, American, and International state the information at issue, if released, would give the requestor an advantage in designing and selling similar games. After review of the information at issue and consideration of the arguments, we find Arrow, American, and International have established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the commission may withhold Arrow's information and portions of American and International's information, which we marked, under section 552.104(a) of the Government Code. The commission must release the remaining information.

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,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/jxd

Ref: ID# 760212

Enc. Submitted documents

c: Requestor
(w/o enclosures)

3 Third Parties
(w/o enclosures)