



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 8, 2020

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

OR2020-00796

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# 805456 (TLC File# L-25972).

The Texas Lottery Commission (the "commission") received a request for information related to a specified drawing.¹ You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. In addition, you state, and provide documentation demonstrating, you notified a third party of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released.² See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exception you claim and reviewed the submitted information.

¹ You state the commission sought and received clarification of the information requested. See Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

² As of this date, we have not received comments from the third party explaining why the submitted information should not be released.

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. This exception encompasses information made confidential by other statutes, such as section 466.411 of the Government Code. Section 466.411 provides:

(a) Subject to Subsection (b), a natural person who is a prize winner of a lottery prize in an amount equal to \$1 million or more, or who is an owner of a beneficial interest in a legal entity that is a prize winner of a lottery prize in an amount equal to \$1 million or more, may on the date the winner claims the prize choose to remain anonymous and prohibit all personally identifiable information from being released to the public.

(b) The commission may release or disclose the personally identifiable information of a natural person who is a lottery prize winner if the person chooses to have the prize paid in periodic installments. The commission may only disclose the information on or after the 30th day after the date the person claims the lottery prize if the person chooses to remain anonymous under Subsection (a).

(c) For purposes of this section, the amount of a lottery prize is the total amount of prize money paid to a prize winner for a single lottery prize claim, whether paid in one payment or in periodic installments, before deducting any federal tax withholdings or other deductions required by law.

(d) This section does not prohibit release of a natural person prize winner’s city or county of residence or prevent the commission from releasing the person’s personally identifiable information to the Health and Human Services Commission or as necessary to comply with Section 466.407 or 466.4075.

Id. § 466.411. You assert portions of the submitted information identify a natural person who won a prize of \$1 million, chose to have the prize paid in a lump sum payment, and elected to remain anonymous. There is no indication the requestor has a right of access to the information under subsection 466.411(d) of the Government Code. *See id.* § 466.411(d). Section 401.324(c) of title 16 of the Texas Administrative Code defines “personally identifiable information” as information that alone or in conjunction with other information identifies an individual, including an individual’s name, social security number, date of birth, or government-issued identification number such as a driver’s license or passport, but does not include the name of the prize winner’s city or county of residence. *See* 16 T.A.C. § 401.324(c). Based on your representations and our review, we conclude, with the exception of the information we have marked for release, the information you have marked is confidential under section 466.411 of the Government Code, and the commission

must withhold it under section 552.101 of the Government Code on that basis.³ However, we find the information we have marked for release does not consist of personally identifiable information for purposes of section 466.411 of the Government Code. Accordingly, the commission may not withhold any portion of the remaining information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Upon review, however, we find you have failed to demonstrate the remaining information at issue is highly intimate or embarrassing and of no legitimate public concern, and the commission may not withhold it under section 552.101 of the Government Code in conjunction with common-law privacy.

Finally, the commission asks this office to issue a previous determination that would permit it to withhold the personally identifiable information of natural persons who win a prize over \$1 million taken in a lump sum payment and who choose to remain anonymous under section 466.411 of the Government Code without the need of requesting a ruling from this office. *See* Gov't Code § 552.301(a) (allowing a governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). We decline to issue such a previous determination at this time.

Additionally, the commission asks this office to issue a previous determination that would permit it to withhold the personally identifiable information of natural persons who win a prize over \$1 million taken in installments and who choose to remain anonymous under section 466.411 for 30 days after the prize is claimed without the need of requesting a ruling from this office. *See* Gov't Code § 552.301(a); ORD 673 (2001). We decline to issue such a previous determination at this time. Accordingly, 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable

³ As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Neal". The signature is stylized with a large initial "T" and a cursive "Neal".

Tim Neal
Assistant Attorney General
Open Records Division

TN/eb

Ref: ID# 805456

Enc. Submitted documents

c: Requestor
(w/o enclosures)