

# **Publisher**Dawn Nettles

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Where drawing results and payouts are posted after each drawing and where you can read about the games of Texas.
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October 21, 2016

Mr. Gary Grief Ms Katelind Powers Texas Lottery Commission 611 E 6th Street Austin, Texas 78701

Dear Katelind & Gary,

In response to your letter of October 6, 2016, where I was informed that you had, in fact, on July 25, 2016, released documents responsive to my June 6, 2016 request, you are right. I owe the Texas Lottery a huge apology as I did receive the email with the attachment on July 25th.

While I do not like making excuses for errors and this is not an excuse, I would like to explain why I didn't see your message. On July 21, 2016, a life threatening medical diagnosis was made on my husband. They immediately scheduled him for extensive testing so they could attempt to fix his problem.

Six days later, on July 27, 2016, he had major surgery then spent the next five days in intensive care and few more days in the hospital. He came home equipped with a feeding tube to recover so he could face surgery again on 10/6.

As a result, I was unable to do most of my lottery work. Checking mail, returning phone calls and writing editorials was not was not a priority for me. I glanced at my mail each day and handled anything that was urgent. In late August, I went through roughly 1400 emails. Obviously, I failed to see your July 25th message.

For my error in accusing the TLC of failing to respond to a request, I sincerely hope you will accept my apology. Please note that I am sending copies of this letter to Senator Thune, Representative Sheets and the TX AG so they can see that I erred.

Now that I've apologized, I would like to respond to a few comments included in your October 6th letter.

You explained why there were no other documents to release after the AG submitted his ruling which was the basis of my October 2nd complaint. For the life of me, I cannot understand how or why I should not expect to receive other documents based on the AG's writing. I would think that an agency would at least advise a requester that nothing else would be sent rather than to leave them hanging as I was. I waited patiently thinking more documents were coming based on the information I had prior to writing my letter on October 2nd.

Next I would like to address your remark pointing out the number of requests I make. Two comments ...

- 1) I think you are failing to consider that the TLC is conducting ninety-eight (98) drawings per week now and 80 to 100 scratch games per year. I track and report extensively on each and every drawing.

-2) Prior to March 2012, I was allowed to call Media Relations when I had questions or needed information. But if you will recall, Ms. Cripe, the new Media Relations Director, cut off all communications to me. This included sending notices of upcoming Commission Meetings and sales figures that I had received daily for years as per instructions by the Commissioners. (See Exhibit A - Ms. Cripe's most resent refusal to provide information to me and instructing me to make an open records request instead)

Regarding your remarks ... "and believe each of your requests are handled appropriately" & "I feel confident the agency complies with the Open Records Act." With all due respect, I'm afraid that I can not and will not agree to these statements. I do not want Senator Thune or Representative Sheets to believe otherwise.

So that you understand, I will provide just a few of many examples that I could provide. I'll give a brief summary of a request made and the response I received. I'll also provide documents to support my statements.

## **Denying The Existence Of A Document**

- -In 2013, I "heard" the TLC kept \$35,000 in prize money that, as mandated by law, was supposed to be turned over to the Abandoned Money division of the Comptroller of Public Accounts. To verify this "rumor," I requested a copy of the claim form and the endorsed prize check. I received the claim form but no cancelled check. So then I requested the journal showing a stop payment had been made on the check in question.
- -|Exhibit B Email exchanges between Sept 17, 2013 and Oct 16, 2013. You asked for a clarification of my request; replied that there were no documents responsive; then sent a cost estimate (\$103.50) for documents responsive. Rather than to pay the inflated price the TLC wanted, I simply gave you the date the document was created so you could no longer deny its existence, cover up or charge me for it. It was then that I received the document showing the TLC had, in fact, stopped payment on the prize check. Had I not already had the document, I firmly believe I wouldn't have received it from the Commission. Why couldn't the Office of the Controller, Ms. Pyka, locate it in the beginning? Do you suppose it could be because the TLC kept the money?

This story in its entirety including the stop payment journal can be found: http://www.lottoreport.com/AuditPart6.htm .

## Shelton Charles, Plaintiff vs Texas Lottery Commission & Gary Grief, Defendant Civil Action No. A-06CA158LY

- -In 2006, I was looking forward to testifying in a Whistleblower lawsuit regarding the difficulties I encountered in receiving information from the Texas Lottery. I provided a multitude of documents to Mr. Charles attorneys in preparations of my testimony. It was my understanding that several IT employees were planning to testify that they were told to inflate costs. Days before the trial, the TLC paid Mr. Charles and settled the case. I never got to share my experiences in obtaining information from the TLC in a court of law.
- **-Exhibit G** A copy of the email Mr. Charles sent to members of the legislature alleging blocking open records requests by inflating costs. Additionally, he alleged the Disaster Recovery site was not operational. This email resulted in Mr. Charles' immediate termination. Attached is also one legal page to identify the court case.

### An inflated cost and an attempt to keep from releasing information

- -On June 6, 2016, I requested the use of emergency/administrative leave pay.
- On June 15, 2016, I received a cost estimate of \$222.30 for me to receive the documents.
- -One June 19, 2016, I asked serious questions regarding the costs quoted then asked why had I not already received documents responsive that were not part of the costs.

- -On June 23, 2016, 14 working days later, I received documents responsive to my request without having to pay.
- **-Exhibit D** My original request, your reply including the invoice & my reply questioning the costs.

## Do I want to pursue a cost estimate to obtain sales figures?

- -On 10/02/16, I wrote, "Would you please send me whatever document would show Lone Star Line Up \$5 per ticket draw sales since the promotion began on Sept 25, 2016."
- -On 10/17/16, you wrote, "According to our Office of the Controller, Lone Star Line Up draw sales are captured at the individual game level. We would need to ask IGT if they can provide a report on the number of promotions triggered. Would you like to pursue a cost estimate to retrieve that information?"
- -One 10/18/16, I replied, "Yes, I would like to receive a cost estimate to obtain Lone Star Line Up sales. I will then decide if it's worth it to pay for public information that the TLC should already have at its fingertips so they can be analyzing the effectiveness of the promotion."

## Disaster Recovery Site - Another AG Opinion To Keep From Releasing Information

- -On September 28, 2016, I requested, "Would you please send me the report of the latest Disaster Recovery plan test as required by law."
- -On October 17, 2016, I received notice that an AG Opinion was requested. I also received a copy of the letter sent to the AG.
- -I wonder is the site not operational? I did hear another "rumor" that prompted my request. Past reports I read do not appear to have much, if any, secure information in them worthy of asking for an AG opinion.

### AG Opinions Are Not Needed For Everyone Who Requests Interview Questions

On April 8, 2014, I requested job interview questions and scoring sheets for a couple of employment positions. On April 24, 2014, I sent a second email asking if you had received my April 8th request. It was then that I learned the agency was asking for an AG opinion.

- -On June 30, 2014, I received a copy of the opinion from the AG. It said the TLC must release the records. I received the documents requested on July 18, 2014. Three months after the request was made.
- -But a year earlier, on March 28, 2013, Mr. Benito Navarro requested three different sets of interview questions to which he received immediately from Ms. Kelly Stucky. No open records request was needed, nor was there a need for an AG Opinion.
- -On August 6, 2013, Ms. Kathy Pyka sent a scoring matrix **on the same day** Mr. Navarro asked for it. Again, there was no need for an Open Records request and no need for an AG opinion. How could this be?
- Why would a former long time employee who resigned by email amid a two year investigation and tumultuous times directly related to his failed job duties receive special treatment in obtaining documents from the Texas Lottery? Especially in light of the fact that most allegations were proven true, ie .... the TLC lost revenues due to fraudulent transactions, the prize payment account had not been balanced in five (5) years, a bank balance could never be determined and Mr. Navarro failed to open a new account in a timely matter to protect state revenues.

- -Former and current employees are required to request documents through Open Records.
- **-Exhibit C** My original request, the AG opinion and copies of the documents released by the TLC. Three (3) emails showing **Ms. Kelly Ms. Stucky** sent Interview Questions to Mr. Navarro. An email string between Ms. Pyka and Mr. Navarro indicating she sent scoring matrix to Mr. Navarro. Also included are a couple of pages from each of the Interview Questions Ms Stucky sent to Mr. Navarro. (I'm only including a couple of pages to reduce the page count included in my attachments)

## No responsive documents? Do I want to pursue a cost estimate?

- -On August 28, 2016, I requested advanced FY16 sales that were carried forward and applied to FY17 draws.
- -On Sept 28, 2016, 30 days later, I received an unbelievable response including an offer to pursue a cost estimate if I wanted the lottery to figure it out.
- -On Sept 29, 2016, I asked how this could be? You responded that you do NOT answer questions and suggested that I contact media relations.
- -To make sure you understand exactly what I was asking for in my request, here's an example ...
  - -Let's say that on Monday, August 29, 2016, I purchase a \$5 multi draw Lotto Texas ticket for the next 10 draws. I pay \$50 for one ticket. This means I have a \$5 lotto ticket for the Aug 31, Sept 3, 7, 10, 14, 17, 21, 24, 28 and Oct 1, 2016 draws.
  - -The division of the \$50 collected by the TLC:
    - -\$25 (\$2.50 per draw) is the states share from each of the next 10 draws.
    - -The players share \$25 (\$2.50 per draw) is applied to the next 10 draws in this manner 40.47% goes in the 6 of 6 prize pool; 2.23% goes in the 5 of 6 prize pool; 3.28% goes in the 4 of 6 prize pool and 4.02% goes in the 3 of 6 prize pool for each of the next 10 draws.
  - -The \$50 collected in FY16 should be included in FY16 total sales figures not in FY17 sales figures. However, the prize pool allocations (advance sales) had to carry over to the FY17 draws.

#### Additional comments ...

- -I've not had time to ask Ms. Cripe about this yet. I can't imagine any lottery not knowing how much in advanced sales was carried forward at the end of a fiscal year for each game. Pari-mutuel calculations can't be computed accurately if it isn't known how much is in the prize pool both before and after the next draw. Jackpot amounts and liabilities can't be determined after each draw if prize pools figures are not known and/or accurate.
- -Based on the lottery's response to this request, I can only say that it appears the Office of the Controller's records have not been maintained much like the failure to balance the checkbook for 5 years. In my opinion, the Texas Lottery should absolutely be able to say at the end of each fiscal year, "we have \$10,500 in advance sales for Lotto Texas; \$30,000 in advance sales for Powerball, \$18,000 in advance sales for Mega Millions, etc"
- **-Exhibit E** is a copy of my original request, your reply, my reply then your final reply. Examples of liabilities.

### Powerball's Flexible Jackpot Calculations

-On September 18, 2016, I made an open records request to obtain - comments to the MUSL rule; TX procedures to calculate jackpot payments figures; votes taken by the Product Group to take action on rules, guidelines and policies; disputes filed; amendments made to Powerball Group rule and finally, procedures applicable to flexible

calculations used to advertise jackpot amounts and how much to pay a jackpot winner. All of this should be available to the public without hesitation.

- -Two days later, Sept 20, 2016, you asked questions pertaining to my request and I replied on the same day.
- -On October 6, 2016, I received notice that you filed for an AG opinion on Oct 3, 2016.
- -In a letter dated Oct 10, 2016, you explained that the documents not included in the AG opinion will not be available to me until October 31, 2016.
- -I was completely baffled ... why the TLC would ... 1) ask questions to clarify my request then 2) file for an Opinion to keep the information from me. Then I learned the TLC filed notice of a Commission Meeting on Oct 5, 2016, where a proposed Powerball rule change would be discussed on October 13, 2016.
- -The inner office memo attached to the Agenda read, "purpose of the proposed amendment is to conform to the Commissions rule to recent changes adopted by the Multi State Lottery Association to clarify prize pool and reserve accounts, to update rule definitions, to clarify MUSL's use of the "MUSL Annuity Factor" and to clarify player remedies in the event of litigation arising out of a Powerball play."

It is my opinion, that an AG opinion was requested so the TLC wouldn't have to release anything for months enabling the new Powerball rule to pass without press and input from Powerball players.

#### Purpose of this particular request (Information not required to provide)

- -The sole purpose of this particular request was to ... 1) try to figure out why Powerball jackpots were increasing by amounts greater than the minimum required when sales do **not** support the jackpot; 2) how jackpot prize amounts were being calculated; 3) which, if any, states were opposed to taking unnecessary financial risks; 4) which, if any states, support shortchanging and/or overpaying winners; and finally; 5) if states have no fear of financial losses due to the belief that in all probability no one will win the jackpot due to the odds of the game.
- **-Exhibit F** are copies of the documents discussed above.

Based on just these few examples of TLC responses to requests I've made, I feel strongly that your statements, "and believe each of your requests are handled appropriately" & "I feel confident the agency complies with the Open Records Act" are **not** accurate. I think I can safely say that it appears the allegations made by Mr. Charles in 2006 would still hold true today. I'm also certain that I'm not the only media/reporter who feels this way.

Again, I do want to offer my sincere apologies for incorrectly accusing you of not responding to a request when you had sent documents. I sincerely hope you will accept my apology.

Sincerely,

Dawn Nettles Enclosures

cc: Brian E. Berger, Assistant Attorney General Representative Kenneth Sheets Honorable Senator John Thune