



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. Plus ... much more!

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June 15, 2020

Gary Grief
Executive Director
Texas Lottery Commission
P. O. Box 16600
Austin, Texas 78761-6600

RE: Enforcement of 16 TAC 403.101; Govnt Code 552.267 & 552.275

Dear Gary,

I would like to respectfully request that the Texas Lottery waive any cost and time limits associated with providing public information to me as per TX Gov Code 552.267 (a) and 552.275 (i), (j) & (m). I feel 552.267 & 552.275 applies directly to me for the following reasons: 1) I am a qualified member of the "press;" 2) I disseminate - on a daily basis - information that is of "public interest" and 3) it is my "sole livelihood." In Part, here is what the Government codes says. (*Exhibit 2 is Gov Code 552.275 Sections J through M in its entirety*)

Government Codes 552.267 & 552.275 In Part States

*-Sec. 552.267. WAIVER OR REDUCTION OF CHARGE FOR PROVIDING COPY OF PUBLIC INFORMATION. (a) A governmental body shall provide a copy of public information **without charge or at a reduced charge** if the governmental body determines that waiver or reduction of the charge is in the **public interest** because providing the copy of the **information primarily benefits the general public.***

-Sec. 552.275. (i) This section does not prohibit a governmental body from providing a copy of public information without charge or at a reduced rate under Section 552.267 or from waiving a charge for providing a copy of public information under that section.

*- Sec. 552.275. (j) **This section does NOT apply if the requestor is an individual who, for a substantial portion of the individual's livelihood or for substantial financial gain, gathers, compiles, prepares, collects, photographs, records, writes, edits, reports, investigates, processes, or publishes news or information for and is seeking the information for:** (See Exhibit 2)*

*-(1) dissemination by a **news medium** or communication service provider, including: (See Exhibit 2)*

*-(m) (2) "News medium" means a newspaper, **magazine or periodical**, a book publisher, a news agency, a wire service, an FCC-licensed radio or television station or a network of such stations, a cable, satellite, or other transmission system or carrier or channel, or a channel or programming service for a station, network, system, or carrier, or an audio or audiovisual production company or Internet company or provider, or the parent, subsidiary, division, or affiliate of that entity, **that disseminates news or information to the public by any means, including:***

(See Exhibit 2 - (m) (2) (G)

Is It In The Public Interest? The Dissemination of Public Information

You may want to debate the issue of “public interest.” I’m not exactly sure how I should convince you that what I do is in the “public interest.”

So I’ll just give a few examples (attached as Exhibit 1) of facts and investigative stories found at lotreport.com in an attempt to convince you that the public does have an interest. Many of my stories have gone national and international. I’m listing just a few but you will know what I’m referencing and what changes were made as a result plus I’m certain you are aware of many not mentioned.

The definition of the “media” in Google ... *“the main means of mass communication (broadcasting, publishing, and the Internet) regarded collectively.”* and *“the term media, which is the plural of medium, refers to the communication channels through which we disseminate news, music, movies, education, promotional messages and other data. It includes physical and online newspapers and magazines, television, radio, billboards, telephone, the Internet, fax and billboards.”* These definitions are the same as 552.275.

I am recognized as a “journalist” and as a “media” by the Texas Media Directory, the Society of Professional Journalists and in 2001, the Attorney General of TX. The AG made the determination as a result of the TLC suspending all communications to me claiming I was not a member of the press and not entitled to the information. The TX AG reversed the TLC’s decision. If you will recall, the TLC took this action against me because I submitted two different forensic reports to the Commissioners alleging “questionable player comments” submitted by G-Tech to support a 6/54 rule change to Lotto Texas. If you will recall, Larry King, the President of G-Tech TX at that time, resigned immediately.

As it stands today, the TLC still instructs me to contact Media Relations when I need information. As you know, the Media Relations department does not speak to the general public. Rather, the general public contacts Customer Service yet Customer Service is instructed not to talk to me. Therefore, it would appear, the Texas Lottery still considers me a member of the press.

It is for these reasons that I believe Code 552.275 **(b)**, as quoted in 16 TAC 403.101, does not apply to lotreport.com. 552.275 (J), (1) & (M) clearly states, in mandatory language, who is exempt from time limits and costs for public information. One request, currently being held for payment, is for the names and addresses of the June 2020 promo retailers. The Texas Lottery does not provide this information to the public. I find it very non-transparent that FREE tickets can be obtained but the Texas Lottery won’t tell players where to get the FREE tickets. I post this very specific information, and have for years, so players have come to depend on me to provide it to them.

My Interpretation - 16 TAC 403.101 vs Gov Code 552.275

The TLC’s newly adopted amended rule, 16 TAC 403.101, effective Oct 31, 2019, allows the TLC to limit time spent on Open Records Requests to a “maximum of 36 hours per year.” In reading the rule, one would think Government Code 552.275 has set the “maximum limit” and the TLC is simply following it.

In my opinion, the language is misleading for consumers because this is not what Gov Code 552.275 states. Rather 552.275 establishes requirements that an agency must be **REASONABLE** in setting a time limit and the time limit **may not be less than 36 hours**. - not a “maximum” as stated in the rule by using the words “*pursuant to Gov Code section 552.275*”

-Rule (403.101) reads ... “(1) **Pursuant to Texas Government Code section 552.275**, the Commission has established a limit of 36 hours per fiscal year as the **maximum** amount of time agency personnel are **required** to spend producing public information for inspection or duplication, or providing copies of public information, to a requestor, without the agency recovering costs attributable to that personnel time.”

-Government code 552.275 Subsection (a) A governmental body **may establish reasonable** monthly and yearly limits on the amount of time that personnel of the governmental body are required to spend producing public information for inspection or duplication by a requestor, or providing copies of public information to a requestor, without recovering its costs attributable to that personnel time.

-Government code 552.275 Subsection (b), A yearly time limit established under Subsection (a) **may not be less than 36 hours** for a requestor during the 12-month period that corresponds to the fiscal year of the governmental body. A monthly time limit established under Subsection (a) **may not be less than 15 hours** for a requestor for a one-month period.”

While I am not going to elaborate at this time, I will say that I make five ritual requests every week consisting of game sales, scratch ticket data, drawing data, promotional information and have made these requests for many, many years. I added the time expended by the TLC and determined that 36 hours is not enough time to provide **JUST** this VERY public information to me. This is why I was “out of time” within 5 months. Therefore, I would have to conclude that the TLC did not make its determination of “36 hours” in a fair and “reasonable” manner. The lottery is a \$6 billion dollar per year entity that produces 75 to 85 scratch games per year and conducts 94 draws per week. I post every draw, track every dollar and every scratch ticket. How could 36 hours per year allow any reporter to cover just the bare basics?

As I conclude this letter, I have requested documents pertaining to drawings, sales, promotional locations and scratch ticket information have been held since April for payment. I am respectfully requesting that you please release these documents without payment Pursuant to Gov Code 552.275 (J).

Sincerely,

Dawn Nettles
Publisher

Attachments: Exhibit 1 & Exhibit 2

cc: Commissioner Winston Krause
Commissioner Erik Saenz
Commissioner Robert Rivera
Commissioner Mark A Franz
Freedom of Information Foundation
Attorney General of TX - Open Records Division
Senator Jane Neslon
Manfred Sternberg
Richard LaGarde

Exhibit 1

Are These Topics of Public Interest?

- 1. Lotto Texas winners who did not receive 32% of sales when the rule said, “shall” receive 32% while many winners received more than 32%. The winners who were short changed have never been paid their rightful amount. If you will recall, after the legislature learned winners had been over paid by nearly \$100 million, they didn’t want to pay out more moeny.
- 2. The Texas Lottery prize payment account had NOT been balanced in years resulting in fraudulent activity and a loss of millions. The persons in charge still holds his and her positions.
- 3. A recent request for information on a player who made a claim in February 2020 (prior to the pandemic) but walked away with no explanation and no money. Shortly after making a request for his information, the Texas Lottery immediately sent him a check for \$5 after he waited for 3 months.
- 4. The Texas Lottery knowingly and intentionally kept "abandoned prize monies." A violation of statutes. Obtaining documents on this one was a nightmare for me.
- 5. An open records request for information on an employee who had been arrested for animal abuse. But he continued to be employed. This was in spite of the negative feelings from those who worked with him. Shortly after making a request, the employee “resigned?”
- 6. At least 10 scratch ticket players finally collected their prize monies after I got involved. The “disputed” claims policies are targeted for only one entity to win ... the Texas Lottery. On one of these cases, had I gone back to tell the Judge the TLC still refused to release the prize money with the court order I delivered, the TLC would’ve really been in trouble. But I accepted Kim’s apology and I just let the out of town player wait a few more days to collect.
- 7. The inflated jackpot that couldn’t have been funded “legally” had it been won.
- 8. The Commissioner who “resigned” for “bad behavior” but the Texas Lottery lied about it. I believe this has actually happened twice now but it’s only made the news once so far. The Director of the Lottery was fired/resigned for lying to the press in one case.
- 9. I suppose I should include the Fun 5’s scratch ticket story (FACTS) that I posted as well.
- 10. I post extensive sales coverage for all games including all Mega Millions and Powerball states. Lottery sales is very popular and of great interest to the public.
- 11. Drawing results are posted immediately after each draw and includes prize payouts, allocations and rules. Most of the time, the drawing results are posted PRIOR to the TLC’s postings.
- 12. I discovered a scratch ticket was selling but there was no reported income to the state. Current records still show the same number of tickets that were initially printed and delivered is still in inventory. Where’s the money? How can TLC records still show no sales?

These are just a few of the many factual facts and stories that I’ve reported since 1998 at lottoreport.com. I believe it would be indisputable to say that the information I post is, in fact, of great “public interest” especially considering that the subject matter is a \$6 billion gambling agency. The good news is that I still have many more investigative stories to publish that have not been completed yet.

- Exhibit 2 -

Gov Code 552.275 - Sections J through M

- (j) This section does not apply if the requestor is an individual who, for a substantial portion of the individual's livelihood or for substantial financial gain, gathers, compiles, prepares, collects, photographs, records, writes, edits, reports, investigates, processes, or publishes news or information for and is seeking the information for:
 - (1) dissemination by a news medium or communication service provider, including:
 - (A) an individual who supervises or assists in gathering, preparing, and disseminating the news or information; or
 - (B) an individual who is or was a journalist, scholar, or researcher employed by an institution of higher education at the time the person made the request for information; or
 - (2) creation or maintenance of an abstract plant as described by Section 2501.004, Insurance Code.
- (k) This section does not apply if the requestor is an elected official of the United States, this state, or a political subdivision of this state.
- (l) This section does not apply if the requestor is a representative of a publicly funded legal services organization that is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as amended, by being listed as an exempt entity under Section 501(c)(3) of that code.
- (m) In this section:
 - (1) "Communication service provider" has the meaning assigned by Section 22.021, Civil Practice and Remedies Code.
 - (2) "News medium" means a newspaper, magazine or periodical, a book publisher, a news agency, a wire service, an FCC-licensed radio or television station or a network of such stations, a cable, satellite, or other transmission system or carrier or channel, or a channel or programming service for a station, network, system, or carrier, or an audio or audiovisual production company or Internet company or provider, or the parent, subsidiary, division, or affiliate of that entity, that disseminates news or information to the public by any means, including:
 - (A) print;
 - (B) television;
 - (C) radio;
 - (D) photographic;
 - (E) mechanical;
 - (F) electronic; and
 - (G) other means, known or unknown, that are accessible to the public.