



INTEROFFICE MEMO

Gary Grief, Executive Director Michael P. Farrell, Charitable Bingo Operations Director

	Approved	Denied
To: J. Winston Krause, Chairman Mark A. Franz, Commissioner Robert Rivera, Commissioner		
From: Deanne Rienstra, Special Counsel <i>DR</i>		
Date: August 7, 2019		
Re: Consideration of and possible discussion and/or action, including proposal, on amendments to 16 TAC §403.101 (Open Records)		

Attached is a draft rule proposal prepared for submission to the *Texas Register* for amendments to 16 TAC §403.101 (Open Records). The purpose of the amendments is to implement Texas Government Code §552.275 (Requests That Require Large Amounts of Employee or Personnel Time) by establishing a reasonable limit of 36 hours per fiscal year as the maximum amount of time Commission personnel are required to spend producing public information for inspection or duplication by a requestor, or providing copies of public information to a requestor, without the Commission recovering costs attributable to that personnel time. The amendments also clarify how to submit public information requests to the Commission and make other clarifying changes to the rule.

The public benefit expected is increased transparency in Commission operations resulting from more prompt, efficient, and cost-effective responses to all members of the public requesting Commission information.

Recommendation: Staff recommends the Commission initiate the rulemaking process by publishing the attached proposal in the *Texas Register* to receive public comment for a period of 30 days.

1 The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §403.101
2 (Open Records). The purpose of the amendments is to implement Texas Government Code
3 §552.275 (Requests That Require Large Amounts of Employee or Personnel Time) by establishing
4 a reasonable limit of 36 hours per fiscal year as the maximum amount of time Commission
5 personnel are required to spend producing public information for inspection or duplication by a
6 requestor, or providing copies of public information to a requestor, without the Commission
7 recovering costs attributable to that personnel time. The amendments also clarify how to submit
8 public information requests to the Commission and make other clarifying changes to the rule.

9 Kathy Pyka, Controller, has determined that for each year of the first five years the
10 amendments will be in effect, there will be no significant fiscal impact for state or local
11 governments as a result of the proposed amendments. There will be no adverse effect on small
12 businesses or rural communities, micro businesses, or local or state employment. There could be
13 an additional economic cost to persons required to comply with the amendments as proposed, but
14 this amount cannot be quantified. Furthermore, an Economic Impact Statement and Regulatory
15 Flexibility Analysis is not required because the proposed amendments will not have an adverse
16 economic effect on small businesses or rural communities as defined in Texas Government Code
17 §2006.001(1-a) and (2).

18 Bob Biard, General Counsel, has determined that for each year of the first five years the
19 proposed amendments will be in effect, the public benefit expected is increased transparency in
20 Commission operations resulting from more prompt, efficient, and cost-effective responses to all
21 members of the public requesting Commission information.

22 Pursuant to Texas Government Code §2001.0221, the Commission provides the following
23 Government Growth Impact Statement for the proposed amendments. For each year of the first

1 five years the proposed amendments will be in effect, Kathy Pyka, Controller, has determined the
2 following:

3 (1) The proposed rule amendments do not create or eliminate a government program.

4 (2) Implementation of the proposed rule amendments does not require the creation of new
5 employee positions or the elimination of existing employee positions.

6 (3) Implementation of the proposed rule amendments does not require an increase or
7 decrease in future legislative appropriations to the Commission.

8 (4) The proposed rule amendments do not require an increase or decrease in fees paid to
9 the Commission.

10 (5) The proposed rule amendments do not create a new regulation.

11 (6) The proposal amends, but does not expand or limit, the existing Commission rule
12 governing open records requests, as authorized by Texas Government Code §552.275.

13 (7) The proposed rule amendments do not increase or decrease the number of individuals
14 subject to the rule's applicability.

15 (8) The proposed rule amendments do not positively or adversely affect this state's
16 economy.

17 The Commission requests comments on the proposed amendments from any interested
18 person. Comments may be submitted to Deanne Rienstra, Special Counsel, by mail at Texas
19 Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189;
20 or by email at legal.input@lottery.state.tx.us. Comments must be received within 30 days after
21 publication of this proposal in the Texas Register in order to be considered.

22 These amendments are proposed under the authority of Texas Government Code §552.230,
23 which authorizes a state agency to promulgate reasonable rules of procedure under which public

1 information may be inspected and copied efficiently, safely, and without delay; Texas Government
2 Code §2001.004(1), which requires state agencies to adopt rules of practice; and Texas
3 Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement
4 and administration of the laws under the Commission's jurisdiction.

5 This proposal is intended to implement Texas Government Code, Chapter 552.
6 §403.101. Open Records.

7 (a) Charges for Copies of Public Records. The charges to any person requesting reproductions of
8 any readily available record of the Texas Lottery Commission will be the charges established by
9 rule by the Office of the Attorney General in accordance with the Texas Government Code Chapter
10 552, Subchapter F.

11 (a-1) Pursuant to Texas Government Code §552.275, the Commission has established a limit of
12 36 hours per fiscal year as the maximum amount of time agency personnel are required to spend
13 producing public information for inspection or duplication by a requestor, or providing copies of
14 public information to a requestor, without the agency recovering costs attributable to that personnel
15 time. The agency will provide each requestor a written statement of the amount of personnel time
16 spent complying with each request for public information from the requestor and the cumulative
17 amount of time spent complying with requests for public information from the requestor during
18 the fiscal year. Subject to the provisions of §552.275, when the 36-hour limit is met or exceeded,
19 the agency will require a requestor to pay costs attributable to cost of materials, overhead, and
20 personnel time necessary to comply with the request.

21 (b) The agency may furnish public records without charge or at a reduced charge if the agency
22 determines that waiver or reduction of the fees is in the public interest.

1 (c) Open Records Requests. The following guidelines apply to requests for records under the
2 Public Information Act, Texas Government Code, Chapter 552.

3 (1) Requests must be in writing and reasonably identify the records requested. All requests
4 must be submitted to the agency's Public Information Coordinator by one of the methods indicated
5 on the agency's website.

6 (2) Records access will be by appointment only.

7 (3) Records access is available only during the regular business hours of the agency.

8 (4) Generally, unless confidential information is involved, review may be by physical
9 access or by duplication, at the requestor's option. Any person, however, whose request would be
10 unduly disruptive to the ongoing business of the office may be denied physical access and will
11 only be provided the option of receiving copies.

12 (5) When the safety of any public record is at issue, physical access may be denied, and
13 the records will be provided by duplication as previously described.

14 (6) Confidential files will not be made available for inspection or for duplication except
15 under certain circumstances, e.g., court order.

16 (7) All open records requests appointments will be referred to the agency's Public
17 Information Open Records Coordinator before complying with a request.