



INTEROFFICE MEMO

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

To: J. Winston Krause, Chairman
Mark A. Franz, Commissioner
Robert Rivera, Commissioner
Erik C. Saenz, Commissioner

From: Deanne Rienstra, Special Counsel

DR

Date: October 10, 2019

Re: Consideration of and possible discussion and/or action, including adoption, on amendments to 16 TAC §403.101 (Open Records)

Attached is a draft rule proposal prepared for submission to the Texas Register to adopt amendments to 16 TAC §403.101 (Open Records), without changes to the proposed text as published in the August 23, 2019, issue of the Texas Register (44 TexReg 4432) (also attached). 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 Commission received no written comments on the proposed amendments during the public comment period.

Recommendation: Staff recommends the Commission adopt the attached rule amendments to 16 TAC §403.101 (Open Records).

1 The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §403.101
2 (Open Records), without changes to the proposed text as published in the August 23, 2019, issue
3 of the *Texas Register* (44 TexReg 4432). The purpose of the amendments is to implement Texas
4 Government Code §552.275 (Requests That Require Large Amounts of Employee or Personnel
5 Time) by establishing a reasonable limit of 36 hours per fiscal year as the maximum amount of
6 time Commission personnel are required to spend producing public information for inspection or
7 duplication by a requestor, or providing copies of public information to a requestor, without the
8 Commission recovering costs attributable to that personnel time. The amendments also clarify
9 how to submit public information requests to the Commission and make other clarifying changes
10 to the rule.

11 The Commission received no written comments on the proposed amendments during the
12 public comment period.

13 These amendments are adopted under the authority of Texas Government Code §552.230,
14 which authorizes a state agency to promulgate reasonable rules of procedure under which public
15 information may be inspected and copied efficiently, safely, and without delay; Texas Government
16 Code §2001.004(1), which requires state agencies to adopt rules of practice; and Texas
17 Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement
18 and administration of the laws under the Commission's jurisdiction.

19 This adoption is intended to implement Texas Government Code, Chapter 552.
20 §403.101. Open Records.

21 (a) Charges for Copies of Public Records. The charges to any person requesting reproductions of
22 any readily available record of the Texas Lottery Commission will be the charges established by

rule by the Office of the Attorney General in accordance with the Texas Government Code Chapter 552, Subchapter F.

(1) Pursuant to Texas Government Code §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 by a requestor, or providing copies of public information to a requestor, without the agency recovering costs attributable to that personnel time.

(2) The agency will provide each requestor a written statement of the amount of personnel time spent complying with each request for public information from the requestor and the cumulative amount of time spent complying with requests for public information from the requestor during the fiscal year. Subject to the provisions of §552.275, when the 36-hour limit is met or exceeded, the agency will require a requestor to pay costs attributable to cost of materials, overhead, and personnel time necessary to comply with the request.

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

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

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

(2) Records access will be by appointment only.

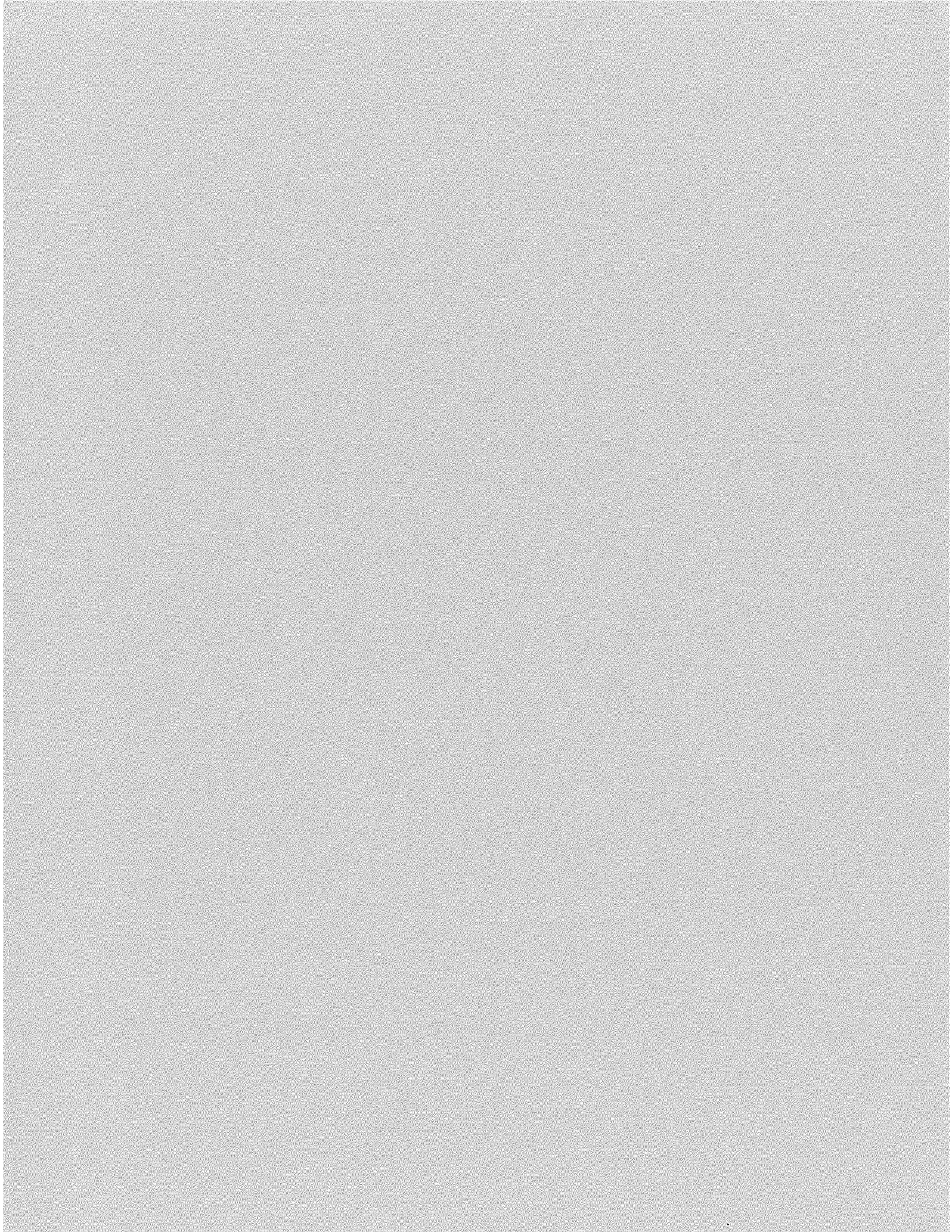
(3) Records access is available only during the regular business hours of the agency.

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

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

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

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



(c) - (f) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 7, 2019.

TRD-201902550

Bob Biard

General Counsel

Texas Lottery Commission

Earliest possible date of adoption: September 22, 2019

For further information, please call: (512) 344-5392



CHAPTER 403. GENERAL ADMINISTRATION

16 TAC §403.101

The Texas Lottery Commission (Commission) proposes 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.

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

Bob Biard, General Counsel, has determined that for each year of the first five years the proposed amendments will be in effect, 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.

Pursuant to Texas Government Code §2001.0221, the Commission provides the following Government Growth Impact Statement for the proposed amendments. For each year of the first five years the proposed amendments will be in effect, Kathy Pyka, Controller, has determined the following:

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

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

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

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

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

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

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

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

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

These amendments are proposed under the authority of Texas Government Code §552.230, which authorizes a state agency to promulgate reasonable rules of procedure under which public information may be inspected and copied efficiently, safely, and without delay; Texas Government Code §2001.004(1), which requires state agencies to adopt rules of practice; and Texas Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This proposal is intended to implement Texas Government Code, Chapter 552.

§403.101. Open Records.

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

(1) Pursuant to Texas Government Code §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 by a requestor, or providing copies of public information to a requestor, without the agency recovering costs attributable to that personnel time.

(2) The agency will provide each requestor a written statement of the amount of personnel time spent complying with each request for public information from the requestor and the cumulative amount of time spent complying with requests for public information from the requestor during the fiscal year. Subject to the provisions of §552.275, when the 36-hour limit is met or exceeded, the agency will require a requestor to pay costs attributable to cost of materials, overhead, and personnel time necessary to comply with the request.

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

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

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

(2) Records access will be by appointment only.

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

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

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

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

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

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 9, 2019.

TRD-201902567

Bob Biard

General Counsel

Texas Lottery Commission

Earliest possible date of adoption: September 22, 2019

For further information, please call: (512) 344-5392



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER EE. COMMISSIONER'S RULES ON REPORTING CHILD ABUSE OR NEGLECT, INCLUDING TRAFFICKING OF A CHILD

19 TAC §61.1051

The Texas Education Agency (TEA) proposes an amendment to §61.1051, concerning reporting child abuse and neglect. The proposed amendment would incorporate definitions; require additional reporting under certain circumstances; detail what must be included in the policy addressing sexual abuse, trafficking, and other maltreatment of children; and describe training requirements for new employees and employees not previously trained.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 61.1051 relates to the reporting of child abuse and neglect and

related training requirements for school districts and open-enrollment charter schools as required by TEC, §38.004 and §38.0041.

The proposed amendment would add new subsection (a) to incorporate definitions for *child abuse or neglect*, *other maltreatment*, and *trafficking of a child* to align with statute.

Language would be added in subsection (b)(1) to align with Texas Family Code requirements regarding mandatory reporting notification.

Language would be added in subsection (b)(2) to require school district and open-enrollment charter school policy to require a report to the Texas Department of Family and Protective Services if the alleged abuse or neglect involves a person responsible for the care, custody, or welfare of the child.

New subsections (b)(3), (7), and (8) would be added to describe the school district's or open-enrollment charter school's policy addressing sexual abuse, trafficking, and other maltreatment of children.

Subsection (c), which contains outdated training dates, would be removed.

Language would be added to subsection (d) to specify that training must be provided to all new school district and open-enrollment charter school employees and to existing school district and open-enrollment charter school employees not previously trained. This requirement would implement TEC, §38.0041. The new language in subsection (d) would also address what must be included in the training, require records of each staff member who participated in the training to be maintained locally, and describe the resources that may be used to provide the training.

In addition, the section and subchapter titles would be changed to reflect reporting child abuse or neglect, including trafficking of a child.

FISCAL IMPACT: Matt Montano, deputy commissioner for special populations, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand the existing regulation by adding a one-time training for existing staff members and expanding the definitions of child abuse and neglect to include the