

CAUSE NO. D-1-GN-14-005114

JAMES STEELE, et al.,	§	IN THE DISTRICT COURT
<i>Plaintiffs,</i>	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
GTECH CORPORATION,	§	
<i>Defendant.</i>	§	201st JUDICIAL DISTRICT

NON-PARTY TEXAS LOTTERY COMMISSION’S MOTION FOR PROTECTIVE ORDER AND TO QUASH SUBPOENA

NOW INTO COURT, through undersigned counsel, comes the Texas Lottery Commission (“TLC”), and hereby moves for a protective order and to quash subpoena issued by counsel for Intervenor-Plaintiffs in the above-captioned civil matter. In support hereof, TLC would show as follows:

1. On or about April 7, 2015, TLC, a non-party, received a subpoena, a true and correct copy of which is attached hereto as Exhibit 1. The subpoena commands TLC to produce, among other things:
 - a. All contracts in effect between September 1, 2013 and the present that govern TLC’s relationship with GTECH Corporation (“GTECH”), including portions redacted from the contracts which are publicly available.
 - b. All communications, internal to TLC or between TLC and GTECH, concerning Instant Game No. 1592 (“Fun 5’s”).
 - c. All documents relating to the design, development and operation of Fun 5’s.
 - d. All documents relating to complaints or inquiries about Fun 5’s.

2. The subpoena also contains a Notice of Intention to Take Deposition by Written Questions of TLC. The questions to be propounded appear to attempt to certify any produced records as business records of TLC.

3. TLC is not a party to this case.

4. TLC is a state agency whose principal office is located at 611 E. 6th Street, Austin, Texas, 78701.

5. Pursuant to Rules 176 and 192.6 of the Texas Rules of Civil Procedure, TLC moves for a protective order that the requested discovery not be had and requests that the Court quash the subpoena.

ARGUMENT AND AUTHORITIES

6. Pursuant to Rules 176 and 192.6 of the Texas Rules of Civil Procedure, a protective order should be granted and the subpoena must be quashed for the reason set forth herein.

7. Plaintiffs' subpoena should be quashed because it commands TLC to produce documents protected as confidential under applicable law. Subject to and without waiving the foregoing objections, TLC will produce relevant documents responsive to the requests that are not related to TLC's confidentiality concerns or otherwise privileged.

8. A trial court has discretion to grant protective orders. Tex. R. Civ. P. 192.6(b). "A trial court abuses its discretion when its ruling is arbitrary, unreasonable, or without reference to guiding rules or legal principles. . . . The mere fact that a trial judge may decide a matter within his discretionary authority in a different manner than an appellate judge in a similar circumstance does not demonstrate that an abuse of discretion has occurred." *Dietz v. Hill Country Restaurants, Inc.*, 398 S.W.3d 761, 764 (Tex.App.—San Antonio 2011, no writ) (internal citations omitted).

9. As instructed by statute, TLC must protect the integrity of its processes. Texas Administrative Code Section 401.501 provides that “[t]he Texas Lottery Commission considers security and integrity to be every agency employee’s responsibility. . . . The agency’s security plan and other security procedures shall be designed to ensure the integrity and security of the operation of the Lottery and, to the extent that they are not inconsistent with Texas Open Records law, Texas Government Code, Chapter 552, are exempt from disclosure to the public.” *See also* Texas Government Code § 466.015 (“The commission shall adopt rules to the extent they are not inconsistent with Chapters 551 and 552 governing the: (1) security for the lottery and the commission, including the development of an internal security plan. . . . [and] (12) the confidentiality of information relating to the operation of the lottery, including: (A) trade secrets; (B) security measures, systems, or procedures; (C) security reports.”)

10. Texas Government Code Section 466.022 provides that “security plans and procedures of commission designed to ensure the integrity and security of the operation of the lottery” as well as “information of a nature that is designed to ensure the integrity and security of the selection of winning tickets” is “confidential and is exempt from disclosure” under the Texas Open Records law, Texas Government Code, Chapter 552.

11. The subpoena requests documents that, if released, would endanger the integrity and security of TLC’s games. The subpoena requests documents that contain sensitive computer architecture and infrastructure information, including but not limited to Lottery security features and processes. These requests also seek information that is irrelevant and not calculated to lead to the discovery of admissible evidence.

12. Based on the foregoing, TLC objects to the subpoena and seeks a protective order from this court and to quash the subpoena.

ADDITIONAL OBJECTIONS

13. TLC objects to the subpoena as overbroad, onerous, and not reasonably limited in time. TLC further objects to the subpoena because the discovery requested can be obtained in a less expensive and less burdensome manner from another source—namely, GTECH, who is already a party to this lawsuit. TLC also notes that the subpoena seeks trade secrets of GTECH, which TLC understands will be subject to GTECH's objection. *See* Tex. R. Evid 507.

WHEREFORE, premises considered, TLC respectfully requests that this court grant a protective order that the discovery not be had, requests that the subpoena be quashed, and for any and all other relief to which it may show itself entitled.

Dated: May 6, 2015

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

Undersigned counsel spoke telephonically with Lessie Fitzpatrick on May 6, 2015, about the subpoena issued to TLC. An agreement to modify or otherwise limit the subpoena could not be reached.

/s/ Ryan S. Mindell _____

Ryan S. Mindell

CERTIFICATE OF SERVICE

I hereby certify that a true copy of this NON-PARTY TEXAS LOTTERY COMISSION'S MOTION FOR PROTECTIVE ORDER AND TO QUASH SUBPOENA was this 6th day of May, 2015, sent to counsel of record via File and Serve Express and/or by email:

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