



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 19, 1995

Mr. Lou Bright
General Counsel
Texas Alcoholic Beverage Commission
P.O. Box 13127
Austin, Texas 78711

OR95-1463

Dear Mr. Bright:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 30822.

The Texas Alcoholic Beverage Commission (the "commission") has received a request for "a copy of the TABC's report" regarding a specific entity licensed by the commission. You have submitted for our review records created by the commission, a Kyle Police Department offense report, and a record generated by the Texas Department of Public Safety.¹ You state that the commission's investigation is complete and that "no action against the involved licensee is contemplated." Nevertheless, you raise section 552.108 of the Government Code, because you are unsure of the status of criminal charges against a person involved in the report. You have not, however, contacted the Kyle Police Department to determine whether the criminal investigation is still active.

¹You ask this office to determine whether the documents submitted for our review are within the ambit of the request because the commission obtained some of the records from the Texas Department of Public Safety and the Kyle Police Department. Normally, this office relies on a governmental body's determination that particular records are responsive to a request. *See* Open Records Decision No. 561 (1990) (concluding that a governmental body must make a good faith effort to relate a request to information which it holds). In addition, the fact that information was generated by another entity is irrelevant to a determination of whether it is public when in the possession of a governmental body. Open Records Decision No. 317 (1982). Thus, we assume for purposes of this ruling that the submitted records are responsive to this request and will rule accordingly.

Where an incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information which relates to the incident. Open Records Decision Nos. 474 (1987), 372 (1983). Once a case is closed, information may be withheld under section 552.108 only if its release "will unduly interfere with law enforcement or crime prevention." Open Records Decision No. 553 (1990) at 4 (and cases cited therein). A governmental body claiming the "law enforcement" exception must reasonably explain how and why release of the requested information would unduly interfere with law enforcement and crime prevention. Open Records Decision No. 434 (1986) at 2-3. You explain, however, that you do not know whether the case is still under active investigation. Moreover, you have not explained how release of the records will "unduly interfere with law enforcement." Therefore, you may not withhold the documents under section 552.108.²

We note, however, that several documents are confidential pursuant to section 5.08³ of the Medical Practice Act, V.T.C.S. art. 4495b. The Medical Practice Act prohibits disclosure of medical records unless the department concludes that further release is authorized pursuant to subsections (c) or (j)(3) of section 5.08. We have marked the records that are subject to the provisions of the Medical Practice Act.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Records Division

²Section 552.108 of the Government Code is a discretionary exception under the act. See Gov't Code § 552.007. We note, however, that the need of another governmental body, other than the one seeking a ruling, may provide a compelling reason for nondisclosure of information under section 552.108. Open Records Decision No. 586 (1991); see also Open Records Decision No. 562 (1990) at 10-11 (information relating to an ongoing *federal* criminal investigation in the possession of a state law enforcement agency may be withheld under section 552.108, even though the state investigation is closed). In this case, you have not provided us with sufficient information to determine whether the Kyle Police Department has a law enforcement interest in nondisclosure of this information.

³The Seventy-fourth Legislature has amended section 5.08 of the Medical Practice Act, V.T.C.S. art. 4495b, effective September 1, 1995. See Act of May 28, 1995, ch. 856, §§ 4-7, 1995 Tex. Sess. Law Serv. 4290, 4293-95 (Vernon); Act of May 27, 1995, ch. 1039, § 71, 1995 Tex. Sess. Law Serv. 5145, 5169 (Vernon).

LRD/rho

Ref.: ID# 30822

Enclosures: Submitted documents

cc: Ms. Shari D. Fox
Legal Assistant
Jones, Kurth, & Treat
10100 Reunion Place, Suite 600
San Antonio, Texas 78216
(w/o enclosures)