



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 30, 2008

Mr. Lou Bright
General Counsel
Texas Alcoholic Beverage Commission
P.O. Box 13127
Austin, Texas 78711-3127

OR2008-05855

Dear Mr. Bright:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 308866.

The Texas Alcoholic Beverage Commission (the "commission") received a request for all records from January 1, 2007 through February 4, 2008 pertaining to the health risks sign issue. You state that you have released some of the information to the requestor. You claim that the submitted information is excepted from disclosure under section 552.107 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the commission's procedural obligations under the Act. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. Gov't Code § 552.301(b). Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply

¹We note that as the submitted information is not subject to section 552.022 of the Government Code, rule 503 of the Texas Rules of Evidence does not apply in this instance. *See* Open Records Decision No. 676 at 4 (2002).

to which parts of the documents. *Id.* § 552.301(e). Although you state the commission received the request for information on February 4, 2008, you did not request a ruling from this office until February 26, 2008. Furthermore, you did not submit a copy of the written request for information until February 27, 2008. Thus the commission failed to comply with the procedural requirements mandated by section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Generally, a governmental body may demonstrate a compelling reason to withhold information by a showing that the information is made confidential by another source of law or affects third party interests. *See* Open Records Decision No. 630 (1994).

Although you raise section 552.107 of the Government Code, this exception is discretionary in nature. It serves only to protect a governmental body's interests and may be waived; as such, it does not constitute a compelling reason to withhold information for purposes of section 552.302. *See* Open Records Decision Nos. 676 at 11-12 (2002) (claim of attorney-client privilege under section 552.107 does not provide compelling reason for purposes of section 552.302 if it does not implicate third-party rights), 663 at 5 (1999) (governmental body may waive section 552.107), 665 at 2 n.5 (2000) (discretionary exceptions in general). Accordingly, the commission may not withhold any of the submitted information pursuant to section 552.107 of the Government Code. As you make no other arguments against disclosure, the submitted information must be released to the requestor.²

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must file suit in

²Because the records being released contain information relating to the requestor that would be excepted from disclosure to the general public to protect the requestor's privacy, the commission must request another ruling from our office if it receives a future request for this information from individuals other than this requestor or his authorized representative. *See* Gov't Code § 552.023 (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles).

Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, consisting of a stylized capital letter 'B' enclosed within a circle. A long, thin horizontal line extends from the bottom right of the circle.

Benjamin A. Diener
Assistant Attorney General
Open Records Division

BAD/jb

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Enc. Submitted documents

c: Mr. Jim Haire
5801 Regents Row
Tyler, Texas 75703
(w/o enclosures)