



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 23, 2013

Ms. Emily E. Helm
General Counsel
Texas Alcoholic Beverage Commission
P.O. Box 13127
Austin, Texas 78711-3127

OR2013-16453

Dear Ms. Helm:

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# 500107.

The Texas Alcoholic Beverage Commission (the "commission") received a request for information related to complaints, investigations, disciplinary actions, write ups, and performance reviews for certain commission police officers, including two named officers, during a specified period of time. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹ We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's contention the commission did not fully comply with the Act's procedural requirements in asking this office for a ruling. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than those submitted to this office.

this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires that a governmental body ask for a decision from this office and state which exceptions apply to the requested information by the tenth business day after receiving the request. *Id.* § 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 an open records request (1) 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 to which parts of the documents. *Id.* § 552.301(e).

The requestor states the request for information was faxed to the commission on June 28, 2013, and argues the commission failed to comply with its statutory deadlines. The commission states the request was sent after business hours on June 28, 2013, and was not received until July 1, 2013. *See id.* § 552.301(c). We note the commission has provided the fax confirmation sheet showing the time the request was sent to the commission. Based on the information provided to this office, we consider the request to have been received by the commission on July 1, 2013.

Thus, the commission was required to request a decision from this office by July 16, 2013, and to submit the information required by section 552.301(e) by July 23, 2013. We note this office does not count any holidays observed by a governmental body as business days for the purpose of calculating a governmental body's deadlines under the Act. However, we did not receive your request for a decision by interagency mail until July 18, 2013, and we did not receive the information required by section 552.301(e) by interagency mail until July 24, 2013. *See id.* § 552.301(b), (e). Further, the commission has provided no evidence these communications were deposited into interagency mail within the applicable deadlines. *See id.* § 552.308(b) (state agency meets deadline if request, notice, or other writing is sent by interagency mail and agency provides evidence sufficient to establish request, notice, or other writing was deposited in interagency mail within deadline period). Accordingly, we conclude the commission failed to comply with the requirements of section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the information is public and it must be released. *See id.* § 552.302. Information presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.*; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (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); *see also* Open Records Decision No. 630 (1994). Generally,

a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. Open Records Decision No. 150 at 2 (1977). You assert the requested information is excepted from disclosure under section 552.103 of the Government Code. Section 552.103 is a discretionary exception to disclosure and may be waived. *See* Gov't Code § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). In failing to comply with the requirements of section 552.301, you have waived your claim under section 552.103. Accordingly, the commission may not withhold the requested information under section 552.103. As you claim no further exceptions to disclosure for the submitted information, you must release it to the requestor.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Michelle R. Garza", with a horizontal line extending to the right.

Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/som

Ref: ID# 500107

Enc. Submitted documents

c: Requestor
(w/o enclosures)