



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 21, 2016

Mr. Charles Wallace
Texas Alcoholic Beverage Commission
P.O. Box 13127
Austin, Texas 78711

OR2016-21300

Dear Mr. Wallace:

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# 630647.

The Texas Alcoholic Beverage Commission (the "commission") received a request for information pertaining to a specified incident. The commission claims the requested information is excepted from disclosure under sections 552.108 and 552.152 of the Government Code. The commission also informs us it notified the Dallas Police Department of the request for information and its right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the claimed exceptions and reviewed the submitted information.

Section 552.152 of the Government Code provides the following:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov't Code § 552.152. The commission represents release of the submitted information would subject undercover commission officers to a substantial threat of physical harm. Upon

review, we find the commission has demonstrated release of some of the information at issue, which we have marked, would subject the officers to a substantial threat of physical harm. Therefore, we conclude the commission must withhold the information we have marked under section 552.152 of the Government Code.¹ However, the commission has not established any of the remaining information is confidential under section 552.152, and may not withhold it on that ground.

Section 552.108 of the Government Code provides in part the following:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;

(3) it is information relating to a threat against a peace officer or detention officer collected or disseminated under Section 411.048; or

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

¹As our ruling is dispositive, we do not address the other arguments of the commission to withhold this information.

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)-(b). A governmental body claiming section 552.108(a)(1) or 552.108(b)(1) must explain how and why the release of the information at issue would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977). The commission does not inform us the remaining information pertains to an ongoing criminal investigation or prosecution, nor has the commission explained how its release would interfere with the detection, investigation, or prosecution of crime. Thus, the commission has not met its burden under section 552.108(a)(1) or 552.108(b)(1). A governmental body claiming section 552.108(a)(2) or 552.108(b)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. The commission has not demonstrated the remaining information pertains to an investigation that has concluded in a result other than conviction or deferred adjudication. Thus, the commission has not met its burden under section 552.108(a)(2) or 552.108(b)(2). Section 552.108(a)(3) is also inapplicable as the remaining information does not relate to a threat against a police officer. *See* Gov't Code § 552.108(a)(3). Finally, the commission does not assert the information at issue was prepared by an attorney representing the state or that it reflects the mental impressions or legal reasoning of an attorney representing the state. *See id.* § 552.108(a)(4), (b)(3). Therefore, the commission may not withhold any of the remaining information under section 552.108.

To conclude, the commission must withhold the information we have marked under section 552.152 of the Government Code. The commission must release the remaining information.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/bw

Ref: ID# 630647

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)