



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 1, 2016

Ms. Julie Allen
Assistant General Counsel
Texas Alcoholic Beverage Commission
P.O. Box 13127
Austin, Texas 78711-3127

OR2016-24315

Dear Ms. Allen:

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# 632626 (TABC Reference ID No. 202240968).

The Texas Alcoholic Beverage Commission (the "commission") received a request for all information pertaining to a specified investigation into a restaurant. You claim the submitted information is excepted from disclosure under sections 552.108 and 552.152 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

¹Although the commission raises section 552.101 of the Government Code, the commission makes no arguments to support this exception. Therefore, we assume the commission has withdrawn its claim this section applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

²We 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 that submitted to this office.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977). Section 552.108 may be invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See Open Records Decision No. 474 at 4-5 (1987)*. Where a governmental body has custody of information relating to a pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration that the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld. You state the submitted information pertains to a pending investigation with the Tyler Police Department (the “department”). However, you have not provided our office with any representation to indicate the department wishes to have the information at issue withheld. Accordingly, we find you have failed to demonstrate section 552.108(a)(1) is applicable to the information at issue, and the commission may not withhold the submitted information under section 552.108(a)(1) of the Government Code.

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. 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. As no other exceptions to disclosure have been raised, 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,



Kavid Singh
Assistant Attorney General
Open Records Division

KVS/bhf

Ref: ID# 632626

Enc. Submitted documents

c: Requestor
(w/o enclosures)