



June 21, 1999

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

OR99-1706

Dear Mr. Bright:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 125081.

The Texas Alcoholic Beverage Commission (the "ABC") received a request for the following:

Copies of all investigation reports, summaries, complaints, violation notices and any supporting documentation related to investigations of River City Cabaret, Ltd. 107 E. Martin, San Antonio Texas, between Dec. 1, 1998 and March 15 1999, whether or not created by TABC personnel.

You state that you have released to the requestor documents labeled Attachments C-1 and C-2<sup>1</sup> after redacting the highlighted portions of Attachment C-1 from the information provided to the requestor. You submit to this office documents labeled Attachment D, which you have withheld from the requestor, as well as documents labeled Attachment C-1 and C-2. You claim that the requested information that you have withheld is excepted from

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<sup>1</sup>Attachment C-2 includes "private records" that are made confidential by section 5.48 of the Alcoholic Beverage Code. Because the requestor appears to be the attorney for River City Cabaret, we assume that he is entitled to the private records of the River City Cabaret, Ltd.

disclosure under sections 552.101, 552.103, and 552.108(a)(1), (2) and 552.108(b)(1), (2) of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.103(a) excepts from disclosure information:

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and
- (2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

The ABC has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The ABC must meet both prongs of this test for information to be excepted under 552.103(a). You state,

At this time, the agency is contemplating formal contested proceedings under the Administrative Procedures Act against the permittee of River City Cabaret based on the investigation reports designated as Attachment D. These documents have been forwarded to Assistant Attorney General Andrew del Cueto who represents the commission. Mr. Del Cueto will, in turn base his prosecution of the alleged administrative violations of the Alcoholic Beverage Code on the investigation reports.

Based on your representations, we find that litigation is reasonably anticipated and that the requested information is related to the anticipated litigation. Accordingly, we conclude that the Commission may withhold from the requestor Attachment D under section 552.103.

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed.

Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

You also claim that the identity of the undercover police officers who were witnesses to the violations are excepted from disclosure.<sup>2</sup> You redacted the names of the undercover law enforcement officers from the documents contained in Attachment C-1. Section 552.108 of the Government Code excepts from required public disclosure

(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 . . . if:

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

Gov't Code § 552.108(b). You state that “[d]isclosure of the identities of officers working in an under cover capacity would destroy the ability of those officers to work in that capacity.” We agree that the release of the names of undercover police officers would interfere with law enforcement or prosecution. *See* Open Records Decision No. 211 at 4 (1978). You may, therefore, withhold the names of the undercover officers on Attachment C-1 under section 552.108 (b)(1).

You have redacted the names and identifying information of witnesses, and you seek to withhold this information from release under section 552.108. However, you fail to explain how release of this information would interfere with the investigation of crime. You may not, therefore, withhold the names and identifying information of the witnesses.

We note that “basic information about an arrested person, an arrest, or a crime” is not excepted from required public disclosure. Gov't Code § 552.108(c). Basic information is the type of information that is considered to be front page offense report information even if this information is not actually located on the front page of the offense report. *See generally Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14<sup>th</sup> Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Except for a violation described as “viol. state health laws 104.001 stales & flats - open beer behind bar counter” in San Antonio Police Department Alcoholic Beverage Inspection Report Assignment # 98/ 777966 in Attachment

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<sup>2</sup>These police officers have a duty to report crime and are not protected by the informer's privilege. *See Roviario v. United States*, 353 U.S. 53 (1957).

D, it appears from attachments C-1 and C-2 that you have disclosed basic information to the requestor. You must release to the requestor basic information about the violation involving open beer behind the bar counter.<sup>3</sup>

You state that you have redacted the driver's license numbers and social security numbers of the witnesses from Attachment C-1. Section 552.130 of the Government Code governs the release and use of information obtained from motor vehicle records. It provides in relevant part as follows:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;

(2) a motor vehicle title or registration issued by an agency of this state[.]

\* \* \* \*

(b) Information described by Subsection (a) may be released only if, and in the manner, authorized by Chapter 730, Transportation Code.

Gov't Code § 552.130. All driver's license numbers on Attachments C-1 and C-2 should be withheld pursuant to section 552.130.

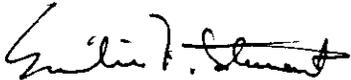
As for social security numbers, section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* Please note that social security numbers in your records belonging to individuals other than witnesses may also be confidential under section 552.101 and the federal Social Security Act.

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<sup>3</sup>Section 552.103(a) excepting litigation from disclosure cannot be invoked to withhold from disclosure basic "front page" type information. Open Records Decision No. 597 (1991).

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.

Sincerely,



Emilie F. Stewart  
Assistant Attorney General  
Open Records Division

EFS\nc

Ref: ID# 125081

Encl.: Submitted documents

cc: Mr. Randall Terrell  
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(w/o enclosures)