



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

October 22, 2003

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

OR2003-7564

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# 189506.

The Texas Alcoholic Beverage Commission (the "commission") received a request for "names, addresses and phone numbers of any and all persons and/or affiliates that are now under investigation for any violation of [the] Alcoholic Beverage Act where the final decision to conduct an investigation of them has been made by [the commission]." You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108 of the Government Code excepts from disclosure certain records of law enforcement agencies and prosecutors. Section 552.108 applies only to records created by an agency, or a portion of an agency, whose primary function is to investigate crimes and enforce criminal laws. *See* Open Records Decision Nos. 493 at 2 (1988), 287 (1981). Section 552.108 generally does not apply to records created by an agency whose chief function is essentially regulatory in nature. Open Records Decision No. 199 (1978). An agency that does not qualify as a law enforcement agency may, under certain limited circumstances, claim that section 552.108 protects records in its possession. *See, e.g.*, Attorney General Opinion MW-575 (1982), Open Records Decision Nos. 493 (1988), 272 (1981).

You explain that the commission is charged with investigating violations of the Alcoholic Beverage Code and of other laws relating to alcoholic beverages, and with cooperating in the prosecution of violators. Alco. Bev. Code §§ 5.31, 5.36. You further explain that each violation of the Alcoholic Beverage Code is a criminal offense, punishable by fine or confinement. Alco. Bev. Code §§ 1.05, 5.42. We note that the commission has established an Enforcement Division that performs law enforcement functions specifically directed to detection, investigation, and prosecution of relevant state and federal criminal laws. Additionally, you inform us that the Enforcement Division employs commissioned inspectors and representatives who have “all the powers of a peace officer coextensive with the boundaries of the state.” *Id.* § 5.14; *see also* Crim. Proc. Code § 2.12(6) (including law enforcement agents of the commission as peace officers); Attorney General Opinion O-4445 (1942). Thus, we find that the Enforcement Division of the commission is a law enforcement agency for purposes of section 552.108. *See A&T Consultants v. Sharp*, 904 S.W.2d 668, 677-78 (Tex. 1995) (comptroller’s office is charged with law enforcement and prosecutory powers); Attorney General Opinion MW-381 at 3 (1981) (former Texas Department of Corrections is law enforcement agency for purposes of predecessor statute); Open Records Decision Nos. 320 (1982) (Texas National Guard is law enforcement agency for purposes of predecessor statute), 211 at 3 (1978) (Attorney General’s Organized Crime Task Force is law enforcement agency), 127 (1976) (arson investigation unit of fire department is law enforcement agency).

Section 552.108(a) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov’t Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We understand that the requested records were created and are held by the Enforcement Division, and that the records relate to pending criminal investigations. On this basis, we conclude that the release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, the commission may withhold the information at issue under section 552.108(a)(1).

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 appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, 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, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 appeal 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 Texas Building and Procurement Commission 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Cindy Nettles

Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 189056

Enc. Submitted documents

c: Mr. James B. Lummus, Trustee
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(w/o enclosures)