



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 15, 2015

Mr. Matthew Cherry  
Public Information Coordinator  
Texas Alcoholic Beverage Commission  
P.O. Box 13127  
Austin, Texas 78711

OR2015-14385

Dear Mr. Cherry:

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# 571495.

The Texas Alcoholic Beverage Commission (the "commission") received a request for a specified case file. 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 information.

Initially, we must address the commission's procedural obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(b), within ten business days after receiving the request the governmental body must request a ruling from this office and state the exceptions to disclosure that apply. *See* Gov't Code § 552.301(b). Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving the 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). You state the commission received the request for information on April 22, 2015. Accordingly, you were required to provide the information required by

subsection 552.301(b) by May 6, 2015, and you were required to provide the information required by subsection 552.301(e) by May 13, 2015. However, we received your request for a ruling via interagency mail on May 11, 2013. Additionally, we received the envelope in which you provided the information required by subsection 552.301(e) via interagency mail on May 18, 2015. You do not inform this office on what date you placed either submission to this office in interagency mail. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Thus, we conclude the commission failed to comply with the procedural requirements set out under section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *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, 381-82 (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). The commission claims section 552.103 of the Government Code for the submitted information. However, that exception is discretionary in nature. It serves to protect a governmental body's interests and may be waived; as such, it does not constitute a compelling reason to withhold information. *See 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 Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Accordingly, the commission may not withhold any portion of the submitted information under section 552.103 of the Government Code. However, we note sections 552.130 and 552.136 of the Government Code are applicable to some of the submitted information.<sup>1</sup> These sections can provide compelling reasons to overcome the presumption of openness. Therefore, we will address the applicability of these sections to the submitted information.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See Gov't Code* § 552.130(a). The commission must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

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<sup>1</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Upon review, we find the commission must withhold the information we have marked under section 552.136 of the Government Code.

In summary, the commission must withhold the information we have marked under sections 552.130 and 552.136 of the Government Code. The commission must release the remaining information.<sup>2</sup>

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](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,



Kristi L. Godden  
Assistant Attorney General  
Open Records Division

KLG/cz

Ref: ID# 571495

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>We note the information the commission is releasing contains partial and complete social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact the social security number of a living person without the necessity of requesting a decision from this office under the Act. *See Gov’t Code* § 552.147(b).