



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 16, 2015

Mr. Matthew Cherry
Public Information Coordinator
Texas Alcoholic Beverage Commission
P.O. Box 13127
Austin, Texas 78711-3127

OR2015-19294

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# 579491.

The Texas Alcoholic Beverage Commission (the "commission") received a request for records related to presentations made by a named individual and/or any commission employee at a specified conference.¹ You claim the requested information is excepted from disclosure under sections 552.101 and 552.111 of the Government Code. We have considered the exceptions you claim.

Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Gov't Code § 552.301. Pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving a 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

¹As the commission did not submit a copy of the request for information, we take our description from the submitted brief.

documents. *See id.* § 552.301(e). You inform us the commission received the request for information on June 25, 2015. You also inform us the commission was closed on July 3, 2015. This office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. Accordingly, the commission's fifteen-business-day deadline was July 17, 2015. However, as of the date of this letter, you have not submitted comments explaining why the stated exceptions apply, a copy of the written request for information, or a copy or representative sample of the information at issue. Consequently, we find the commission failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason 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 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Although you claim the requested information is excepted from disclosure under section 552.111 of the Government Code, this is a discretionary exception that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions, governmental body may waive section 552.111), 470 at 7 (1987) (deliberative process privilege under statutory predecessor to section 552.111 subject to waiver). Thus, in failing to comply with section 552.301, the commission has waived its claim under section 552.111 of the Government Code. Furthermore, although you raise section 552.101 of the Government Code, which is a mandatory exception to disclosure, because you have not submitted the requested information to this office for our review, we have no basis for finding it confidential under section 552.101 of the Government Code. Thus, we have no choice but to order you to release the requested information in accordance with section 552.302 of the Government Code. If you believe the information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

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,

A handwritten signature in black ink, appearing to read 'Thana Hussaini', with a stylized flourish at the end.

Thana Hussaini
Assistant Attorney General
Open Records Division

TSH/bhf

Ref: ID# 579491

Enc. Submitted documents

c: Requestor