



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 27, 2016

Ms. Dina Powell  
Legal Assistant  
Texas Alcoholic Beverage Commission  
P.O. Box 13127  
Austin, Texas 78711-3127

OR2016-14602

Dear Ms. Powell:

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# 616148.

The Texas Alcoholic Beverage Commission (the "commission") received a request for information pertaining to a specified administrative notice. You state you will release some information. You claim the requested information is excepted from disclosure under sections 552.101, 552.103, 552.106, 552.107, 552.108, 552.109, 552.110, and 552.111 of the Government Code. We have considered the exceptions you claim.

We must address the commission's obligations under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the claimed 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. Gov't Code § 552.301(e). You state the commission received the request for information on April 7, 2016. However, as of the date of this letter, you have not submitted to this office written comments

explaining why the stated exceptions apply or a copy or representative sample of the information requested. Accordingly, we conclude the commission failed to comply with the requirements of section 552.301(e).

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). Although you raise sections 552.103, 552.106, 552.107, 552.108, and 552.111 of the Government Code, these exceptions are discretionary in nature. They serve to protect a governmental body's interests and may be waived; as such, they do not constitute compelling reasons to withhold information. *See* Gov't Code § 552.007; *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. 677 at 10 (2002) (attorney work product privilege under section 552.111 may be waived), 676 at 6 (2002) (attorney-client privilege under section 552.107(1) may be waived), 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived), 470 at 7 (1987) (governmental body may waive statutory predecessor to section 552.111 deliberative process), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Furthermore, because the commission has not submitted the information to this office for our review, we have no basis for finding it confidential under any mandatory exceptions or by other law. Therefore, we have no choice but to order the commission to release the responsive information in accordance with section 552.302 of the Government Code. If the commission believes the information is confidential and may not lawfully be released, the commission must challenge this ruling in court pursuant to 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 that reads "Matthew Taylor". The signature is written in a cursive style with a long horizontal flourish at the end.

Matthew Taylor  
Assistant Attorney General  
Open Records Division

MHT/dls

Ref: ID# 616148

c: Requestor