



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 28, 2016

Mr. Charles Wallace
Texas Alcoholic Beverage Commission
P.O. Box 13127
Austin, Texas 78711-3127

OR2016-26183

Dear Mr. Wallace:

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# 635443.

The Texas Alcoholic Beverage Commission (the "commission") received a request for the original wine and beer applications submitted to the commission on a specific date. The commission claims the requested information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.107, 552.108, 552.111, 552.115, 552.117, 552.1175, 552.1176, 552.119, 552.129, 552.130, 552.132, 552.1325, 552.136, 552.137, 552.138, 552.139, 552.147, 552.150, and 552.152 of the Government Code. We have considered the exceptions the commission claims.

We must address the commission's procedural obligations under section 552.301(e) of the Government Code when requesting a decision from this office under the Act. 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 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). As of the date of this letter, you have not submitted written comments stating the reasons why the claimed exceptions apply or a copy of the specific information requested or representative samples. Consequently, we find the commission failed to comply with the requirements of section 552.301(e) in requesting this decision from our office.

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 discretionary exceptions to disclosure, these sections protect a governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Accordingly, because the commission has failed to comply with the requirements of the Act, the commission has waived its claimed discretionary exceptions to disclosure. *See* ORD 663 at 5. Additionally, as you have not submitted the requested information for our review, we cannot find any of the information confidential by 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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/som

Ref: ID# 635443

c: Requestor