



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 28, 2017

Ms. Julie Allen
Assistant General Counsel
The Texas Alcoholic Beverage Commission
P.O. Box 13127
Austin, Texas 78711-3127

OR2017-17001

Dear Ms. Allen:

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# 668497 (PIR Ref. No. 1490908801).

The Texas Alcoholic Beverage Commission (the "commission") received a request for information pertaining to a specified permit renewal.¹ You claim the submitted information is exempted from disclosure under sections 552.101 and 552.108 of the Government Code.²

¹The commission sought and received clarification of the information requested. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

²Although you did not cite to section 552.101 of the Government Code in your brief to this office, we understand you to raise this section based on the substance of your arguments. Further, although you claim the informer's privilege under Texas Rule of Evidence 508, the Texas Supreme Court has held that the Texas Rules of Evidence are "other law" within the meaning of section 552.022 of the Government Code. *See In re Georgetown*, 53 S.W.3d 328 (Tex. 2001); Gov't Code § 552.022(a). Because section 552.022 is not applicable to the information you seek to withhold under the informer's privilege, we do not address your argument under rule 508.

We have considered the exceptions you claim and reviewed the submitted representative sample of information.³

Initially, we note, and you acknowledge, the commission failed to comply with the procedural requirements mandated by section 552.301 of the Government Code. *See* Gov't Code § 552.301(b). 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 the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (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); *see also* Open Records Decision No. 630 (1994). The commission claims section 552.101 in conjunction with the common-law informer's privilege and section 552.108 of the Government Code for the submitted information. However, we find you have failed to establish a compelling reason to address your arguments. We note, section 552.137 provides a compelling reason to overcome the presumption of openness.⁴ Therefore, we will address the applicability of this section to the submitted information.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). The e-mail address at issue is not within the scope of section 552.137(c). Accordingly, the commission must withhold the e-mail address we marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its release. The remaining information must be released.

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.

³We assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

⁴The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 "Emily Kunst". The signature is written in a cursive, slightly slanted style.

Emily Kunst
Attorney
Open Records Division

EK/eb

Ref: ID# 668497

Enc. Submitted documents

c: Requestor
(w/o enclosures)