



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 28, 2019

Ms. Anastasia Broadfoot
Attorney
Office of the General Counsel
Texas Alcoholic Beverage Commission
P.O. Box 13127
Austin, Texas 78711

OR2019-05553

Dear Ms. Broadfoot:

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# 753446 (ORR# R00401-120718).

The Texas Alcoholic Beverage Commission ("TABC") received a request for information pertaining to a specified incident. TABC claims the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Initially, we must address the procedural obligations of TABC under section 552.301 of the Government Code, which 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(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. Gov't Code § 552.301(b). TABC informs us it received the request for information on December 7, 2018. Thus, TABC's ten-business-day deadline to request a ruling was December 21, 2018. However, TABC submitted the request for ruling by hand delivery on December 27, 2018. *See generally* Gov't Code § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Therefore, TABC failed to comply with the procedural requirements mandated by 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 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). Because section 552.137 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will address the applicability of this section to the information at issue.¹ However, we find TABC has failed to establish a compelling reason to address section 552.108 of the Government Code.

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 does not appear to be of a type specifically excluded by section 552.137(c), and TABC does not inform us a member of the public has affirmatively consented to its release. Therefore, TABC must withhold the e-mail address we have marked under section 552.137 of the Government Code. TABC must release the remaining information.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/som

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

Ref: ID# 753446

Enc. Submitted documents

c: Requestor
(w/o enclosures)