



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 23, 2020

Ms. Raika Rowe  
Public Information Coordinator  
Texas Alcoholic Beverage Commission  
P.O. Box 13127  
Austin, Texas 78711-3127

OR2020-23951

Dear Ms. Rowe:

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# 845887 (Reference No. R002880-070220).

The Texas Alcoholic Beverage Commission (the "TABC") received a request for all complaints pertaining to a named entity at a specified address. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you have submitted only one video recording and one audio recording in response to the request. To the extent any additional responsive information existed on the date the TABC received this request, we assume you have released it. If you have not released any such records, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). By its terms, section 552.108 applies only to a law

enforcement agency or a prosecutor. We note the TABC's Enforcement Division is a law enforcement agency. *See* Alco. Bev. Code §§ 5.14 (TABC may commission inspectors with police powers to enforce Alcoholic Beverage Code), .36 (TABC shall investigate violations of Alcoholic Beverage Code and other laws relating to alcoholic beverages), .361 (TABC shall develop risk-based approach to enforcement). You state the submitted information pertains to a closed criminal investigation of the TABC's Enforcement Division that did not result in a conviction or deferred adjudication. Based upon this representation and our review, we agree section 552.108(a)(2) is applicable to the submitted information. Accordingly, the TABC may withhold the submitted information under section 552.108(a)(2) of the Government Code.<sup>1</sup>

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Ashley Crutchfield  
Assistant Attorney General  
Open Records Division

AC/jxd

Ref: ID# 845887

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>1</sup> As we are able to make this determination, we do not address your remaining argument against disclosure or the applicability of section 1701.661(a) of the Occupations Code to the submitted video recording. *See generally* Occ. Code § 1701.661(a), (e).