

C A M P A I G N F O R  
**ACCOUNTABILITY**

June 20, 2019

**Via Open Records Complaint online filing system**

Office of the Attorney General of Texas  
PO Box 12548  
Austin, TX 78711-2548

**Re: Public Information Act Request Complaint**

Dear Open Records Division:

Campaign for Accountability (“CfA”) makes this complaint concerning a request for public information made to the Texas Alcoholic Beverage Commission (“TABC”) pursuant to the Texas Public Information Act, Tex. Gov’t Code §§ 552.001 *et seq.*

On February 7, 2019, CfA submitted a request to the TABC for any and all communications to, from, or between (1) any employee or representative of the TABC and State Senator Joan Huffman, or any employee or representative of Sen. Huffman, (2) any employee of the TABC regarding Sen. Huffman, and (3) any employee of the TABC and Keith Lawyer, regarding Marcus Stokke, Graham Central Station, or Electric Cowboy.<sup>1</sup>

On March 1, 2019, the TABC Open Records office released information pursuant to CfA’s request, R000677-020719. The response provided a redaction notice relying on two exceptions, stating that:

Records responsive to your request have been redacted in accordance with Office of the Attorney General's open records ruling OR2018-06191.

Personal e-mail addresses have been redacted pursuant to §552.137 of the Government Code and Office of the Attorney General’s Open Records Decision No. 684 (2009).<sup>2</sup>

On March 6, March 19, and April 22, 2019, CfA requested TABC to provide clarification regarding the redaction made on pages 149 and 150 of the 1,012-page PDF document released pursuant to R000677-020719.<sup>3</sup>

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<sup>1</sup> Letter from Daniel Stevens, Executive Director of Campaign for Accountability, to Texas Alcoholic Beverage Commission, Feb. 7, 2019, attached as Exhibit A.

<sup>2</sup> Email from Texas Alcoholic Beverage Commission to Daniel Stevens, Mar. 1, 2019, attached as Exhibit B.

<sup>3</sup> Email from Daniel Stevens to TABC, Apr. 22, 2019, attached as Exhibit C; The PDF document is available at this link: <https://www.documentcloud.org/documents/6021975-R000677-020719.html>.

The redaction appears on the “Report Narrative” portion of Texas Alcoholic Beverage Commission-Longview Incident Report No. 3021991.1 regarding a “Failure to Report Breach” offense pertaining to Graham Central Station.<sup>4</sup> Pages one and three of Report No. 302199.1 are redacted.<sup>5</sup> CfA also requested clarification on why page two of Report No. 302199.1 was missing.<sup>6</sup> As of June 20, 2019, the TABC has failed to provide the clarifications requested.

The TABC has violated the Texas Public Information Act for failing to seek the attorney general’s determination on applicable exceptions and for relying on inappropriate authority for withholding information contained in Report No. 302199.1. Tex. Gov’t Code § 552.301.

When a governmental body seeks to withhold information from a request, the governmental body must ask for a decision from the attorney general to determine whether the exceptions enumerated in Subchapter C of the Texas Public Information Act apply.<sup>7</sup> Tex. Gov’t Code § 552.301. On February 22, 2019, the TABC submitted a request for a ruling to the Open Records Division, invoking all exceptions enumerated by § 522.101 - § 522.156 of the Public Information Act.<sup>8</sup> On March 1, 2019, the TABC rescinded its request for a ruling from the Open Records Division and stated that “we will provide all responsive records.”<sup>9</sup> By rescinding the request for a ruling, the TABC has recognized that Report No. 302199.1 is subject to full disclosure unless the information contained in the report falls within a previous attorney general determination that such information is exempt from disclosure. Tex. Gov’t Code § 552.301(a).

The TABC inappropriately relied upon the Office of the Attorney General’s open records ruling OR2018-06191 as a previous determination for redacting Report No. 302199.1.<sup>10</sup> On page four, the open records ruling OR2018-06191 states:

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.

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Email from Daniel Stevens to TABC, Apr. 22, 2019, attached as Exhibit C.

<sup>7</sup> *See also* Thomas v. Cornyn, 71 S.W.3d 473, 480-1 (Tex. App. 2002) (stating that the governmental body seeking to withhold requested information has the burden of proof to establish to the attorney general that the requested information falls within an explicitly provided exception under the Act).

<sup>8</sup> Letter from Raika Rowe, Public Information Coordinator for the Texas Alcoholic Beverage Commission, to Justin Gordon in the Open Records Division of the Office of the Attorney General, Feb. 22, 2019, attached as Exhibit D.

<sup>9</sup> Letter from Raika Rowe, Public Information Coordinator for the Texas Alcoholic Beverage Commission, to Justin Gordon in the Open Records Division of the Office of the Attorney General, Mar. 1, 2019, attached as Exhibit E.

<sup>10</sup> Email from Texas Alcoholic Beverage Commission to Daniel Stevens, Mar. 1, 2019, attached as Exhibit B.

Therefore, OR2018-06191 does not support the TABC's decision to redact Report No. 302199.1 without seeking the attorney general's determination. Further, the TABC does not have authority to unilaterally withhold information on the basis of a prior open records decision merely because it believes that such a legal standard for an exception applies to the information contained in Report No. 302199.1.<sup>11</sup> Consequently, the TABC has failed to comply with Tex. Gov't Code § 552.101 as it did not provide particularized reasons for withholding information. As of June 20, 2019, the TABC still has not responded to CfA's requests for clarification.

CfA therefore requests that the Open Records Division order the TABC to release redacted and missing information from Report No. 302199.1 due to the TABC's failure to comply with § 552.301. Tex. Gov't Code § 552.302. If the TABC presents any alleged compelling reason to withhold the information, CfA additionally asks the Open Records Division to review the actions of the TABC and make a determination on whether the information is properly withheld.<sup>12</sup>

CfA requests disclosure of redacted and missing information from Report No. 302199.1 because such information will provide insight into why a TABC investigator was fired after commencing an investigation on Graham Central Station. It is of paramount interest for the TABC to disclose the information to educate the general public about the TABC's conduct.

Please promptly facilitate TABC's disclosure. If you have any questions about this complaint, please contact me at 202-780-5750. If possible, please email the records to me at [dstevens@campaignforaccountability.org](mailto:dstevens@campaignforaccountability.org). If the records are mailed, please send them to: Campaign for Accountability, 611 Pennsylvania Ave S.E., #337, Washington, D.C. 20003.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dan E. Stevens", with a long horizontal flourish extending to the right.

Daniel E. Stevens  
Executive Director

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<sup>11</sup> See also Tex. Att'y Gen. Open Records Decision No. 511, 5 (1988).

<sup>12</sup> See also *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App. 2005) (holding that the governmental body must show that it claims an exception to disclosure within one of the statutory exceptions, which creates a compelling reason to withhold information).

# EXHIBIT A

# C A M P A I G N F O R ACCOUNTABILITY

February 7, 2019

By Email: [open.records@tabc.texas.gov](mailto:open.records@tabc.texas.gov)

Texas Alcoholic Beverage Commission  
5806 Mesa Dr  
Austin, Texas 78731

**Re: Public Information Act Request**

Dear Sir or Madam:

Campaign for Accountability (“CfA”) makes this request for records, regardless of format, medium, or physical characteristics, and including electronic records and information, audiotapes, videotapes and photographs, pursuant to the Texas Public Information Act. TX Gov’t Code § 552.001 *et seq.*

First, CfA seeks any and all communications to, from, or between any employee or representative of the Texas Alcoholic Beverage Commission (“TABC”), and State Senator Joan Huffman, or any employee or representative of Sen. Huffman.

Second, CfA seeks any and all communications to, from, or between any employee of the TABC regarding Sen. Huffman.

Third, CfA seeks any and all communications to, from, or between any employee of the TABC, and Keith Lawyer regarding Marcus Stokke, Graham Central Station, or Electric Cowboy.

This request is for records from January 1, 2014 to December 31, 2017.

By way of background, Sen. Huffman was elected to the Texas State Senate in 2008.<sup>12</sup> In 2015, she sponsored an amendment to House Bill 3736 and House Bill 3511, which would have allowed public officials to keep their spouses’ financial disclosures private.<sup>3</sup> The Legislature passed Sen. Huffman’s amendment, but the overall bill was vetoed by the Governor.<sup>4</sup> As a result, Sen. Huffman disclosed her husband’s vast financial holdings on her 2015 financial disclosure form.<sup>5</sup>

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<sup>1</sup> Alan Bernstein, *Huffman defeats Bell in runoff for state Senate seat*, *Houston Chronicle*, December 16, 2008, available at <https://www.chron.com/news/houston-texas/article/Huffman-defeats-Bell-in-runoff-for-state-Senate-1620909.php>.

<sup>2</sup> <https://senate.texas.gov/member.php?d=17>.

<sup>3</sup> Jay Root, *Huffman Stands by Push for "Spousal Loophole"*, *Texas Tribune*, January 12, 2015, available at <https://www.texastribune.org/2015/05/31/huffman-criticized-pushing-new-spousal-loophole/>.

<sup>4</sup> Jay Root, *Abbott Vetoes Spousal Loophole*, *Texas Tribune*, June 20, 2015, available at <https://www.texastribune.org/2015/06/20/abbott-vetoes-spousal-loophole-davis-says/>.

<sup>5</sup> Jay Root, *Huffman Discloses Husband’s Financial Holdings*, *The Texas Tribune*, June 29, 2015, available at <https://www.texastribune.org/2015/06/29/huffman-discloses-husbands-financial-holdings/>.

Notably, Sen. Huffman disclosed that her husband, Keith Lawyer, had a financial interest in several nightclubs in eastern Texas, including one now known as Electric Cowboy, but previously known as Graham Central Station. In 2018, an investigator for the TABC filed a lawsuit against the agency alleging that he had been fired because he refused to drop an investigation into the club.<sup>6</sup> The lawsuit is pending.

Where possible, please produce records electronically, in PDF or TIF format on a CD-ROM. CfA seeks records of any kind, including electronic records, audiotapes, videotapes, and photographs. This request includes any letters, emails, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions. This request also includes any attachments to these records.

If it is your position that any portion of the requested records is exempt from disclosure, please state the basis of the exemption. TX Gov't Code § 552.101. Please explain in writing and with particularity the reasons for any determination that a record is exempt from disclosure. In the event that a portion of a requested record is properly exempt from disclosure, please redact that portion and produce the remainder of the requested record. If you deny this request in whole or in part, please specify each exemption on which you are relying to withhold information.

CfA is a non-profit organization and seeks the requested information to inform and educate the public about whether Sen. Huffman communicated with TABC officials regarding her husband's business interests. Accordingly, because CfA seeks the information to benefit the general public, we request that the information be provided without charge. TX Gov't Code § 552.267. If a fee waiver is not available, please inform me if the cost will exceed \$200. TX Gov't Code § 552.2615.

Please promptly produce the requested information. If, however, production cannot occur within 10 business days, please certify that fact to us and provide a time when the information will be available. TX Gov't Code § 552.221. If you are unable to meet this statutorily required time period, or foresee any problems in releasing the requested records in whole or in part, please contact me at 202-780-5750.

Finally, I welcome the opportunity to discuss with you whether and to what extent this request can be narrowed or modified to better enable you to process it.

If possible, please email the records to me at [dstevens@campaignforaccountability.org](mailto:dstevens@campaignforaccountability.org). If the records are mailed, please send them to: Campaign for Accountability, 611 Pennsylvania Ave S.E., #337, Washington, D.C. 20003.

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<sup>6</sup> Steve Miller, Huffman Worked to Scuttle Investigation of Bar Owned by Her Husband, Lawsuit Claimed, *The Texas Monitor*, June 11, 2018, available at <https://texasmonitor.org/huffman-worked-scuttle-investigation-bar-owned-husband-lawsuit-claims/>.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dan E. Stevens", with a long horizontal flourish extending to the right.

Daniel E. Stevens  
Executive Director

# **EXHIBIT B**



## TABC Records Request :: R000677-020719

TABC Open Records <tabc@mycusthelp.net>

Fri 3/1/2019 4:49 PM

To: dstevens@ <campaignforaccountability.org dstevens@campaignforaccountability.org>

### Attachments:

[677 RescindReqforRuling.pdf](#)

--- Please respond above this line ---

Texas Alcoholic Beverage Commission

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Dear Daniel Stevens,

The Texas Alcoholic Beverage Commission has processed your open records request. We have withdrawn our request for a letter ruling from the attorney general (see attached). Please view [Request R000677-020719](#) to retrieve records responsive to your request.

### Redaction Notice:

- Records responsive to your request have been redacted in accordance with Office of the Attorney General's open records ruling OR2018-06191.
- Personal e-mail addresses have been redacted pursuant to §552.137 of the Government Code and Office of the Attorney General's Open Records Decision No. 684 (2009).

**Confidentiality Notice:** If you receive any confidential information identified above without redactions applied, you are hereby notified that it was erroneously sent or inadvertently disclosed to you. Please contact us immediately and do not disseminate the information further.

This is a complete production of records responsive to your request and we are closing the matter.

Thank you,

TABC Open Records

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Update/track your request via [My Request Center](#).

# **EXHIBIT C**

## Re: TABC Records Request :: R000677-020719

Daniel Stevens

Mon 4/22/2019 10:39 AM

To: TABC Open Records <tabc@mycusthelp.net>; open records <open.records@tabc.texas.gov>

Bcc cfa.intern@outlook.com <cfa.intern@outlook.com>

Good Afternoon,

Can you please provide me an update on my request for clarification?

Best,

Dan

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Daniel Stevens

Executive Director

Campaign for Accountability

202.780.5750 (o)

<http://campaignforaccountability.org/>

@Accountable\_Org

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**From:** Daniel Stevens

**Sent:** Tuesday, March 19, 2019 1:44 PM

**To:** TABC Open Records; open records

**Subject:** Re: TABC Records Request :: R000677-020719

Good Afternoon,

I hope this email finds you well. I just wanted to check in regarding my inquiry of March 6, 2019. Do you have any information regarding my question?

Thanks!

Dan

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Daniel Stevens

Executive Director

Campaign for Accountability

202.780.5750 (o)

<http://campaignforaccountability.org/>

@Accountable\_Org

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**From:** Daniel Stevens

**Sent:** Wednesday, March 6, 2019 5:22 PM

**To:** TABC Open Records

**Subject:** Re: TABC Records Request :: R000677-020719

Good Afternoon,

Thank you for sending us the documents in response to our open records request. I have a one follow up question regarding some of the records.

On page 148 of 1,012 in the PDF called R000677-020719, there is a six page report (Report Number: 302199.1). It appears that the narrative for this report is redacted entirely, and the second page of the report is missing. Can you please provide an explanation for why this information has been redacted/not included?

Thank you,

Dan

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Daniel Stevens  
Executive Director  
Campaign for Accountability  
202.780.5750 (o)  
<http://campaignforaccountability.org/>  
@Accountable\_Org

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**From:** Daniel Stevens  
**Sent:** Monday, March 4, 2019 10:37 AM  
**To:** TABC Open Records  
**Subject:** Re: TABC Records Request :: R000677-020719

Thank you. We have received the documents, and we have been able to download everything. I will follow up with any questions that we may have.

Best,

Dan

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Daniel Stevens  
Executive Director  
Campaign for Accountability  
202.780.5750 (o)  
<http://campaignforaccountability.org/>  
@Accountable\_Org

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**From:** TABC Open Records <tabc@mycusthelp.net>

**Sent:** Friday, March 1, 2019 4:49 PM

**To:** dstevens@

**Subject:** TABC Records Request :: R000677-020719

**Attachments:**

[677 RescindReqforRuling.pdf](#)

--- Please respond above this line ---



**TEXAS ALCOHOLIC  
BEVERAGE COMMISSION**  
*Texans Helping Businesses & Protecting Communities*

Dear Daniel Stevens,

The Texas Alcoholic Beverage Commission has processed your open records request. We have withdrawn our request for a letter ruling from the attorney general (see attached). Please view [Request R000677-020719](#) to retrieve records responsive to your request.

**Redaction Notice:**

- Records responsive to your request have been redacted in accordance with Office of the Attorney General's open records ruling OR2018-06191.
- Personal e-mail addresses have been redacted pursuant to §552.137 of the Government Code and Office of the Attorney General's Open Records Decision No. 684 (2009).

**Confidentiality Notice:** If you receive any confidential information identified above without redactions applied, you are hereby notified that it was erroneously sent or inadvertently disclosed to you. Please contact us immediately and do not disseminate the information further. This is a complete production of records responsive to your request and we are closing the matter.

Thank you,

TABC Open Records

Update/track your request via [My Request Center](#).

# **EXHIBIT D**



# TEXAS ALCOHOLIC BEVERAGE COMMISSION

*Texans Helping Businesses & Protecting Communities*

**Kevin J. Lilly**  
*Presiding Officer – Houston*

**Ida Clement Steen**  
*Member – San Antonio*

**Commission Member**  
*Vacant*

**A. Bentley Nettles**  
*Executive Director*

February 22, 2019

Justin Gordon  
Office of the Attorney General  
Open Records Division  
209 West 14th Street  
Austin, Texas 78711  
(Via Interagency Mail on Feb. 22, 2019)

**Re: Request for Letter Ruling**  
TABC PIR Reference No. R000677-020719

Dear Mr. Gordon:

The Texas Alcoholic Beverage Commission (the "Commission") received a request under the Texas Public Information Act ("PIA") from Mr. Daniel Stevens on February 7, 2019. A copy of the request is enclosed as Exhibit A.

The Commission asserts information responsive to the request is excepted from disclosure under the PIA and submits this request for a letter ruling. Specifically, the Commission invokes all of the exceptions provided by, and incorporated into, PIA §§ 552.101 through 552.156. In accordance with PIA § 552.301, the Commission will provide written comments and copies of the responsive records (or a representative sample) in subsequent correspondence.

Thank you for your time and attention to this matter. Should you have any questions or require additional information, please feel free to contact me by phone at (512) 206-3223 or by e-mail at [raika.rowe@tabc.texas.gov](mailto:raika.rowe@tabc.texas.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Raika Rowe".

Raika Rowe  
Public Information Coordinator  
Texas Alcoholic Beverage Commission

Cc: Mr. Daniel Stevens (Requestor)  
*Via email through TABC Open Records Center*

# **EXHIBIT E**





# TEXAS ALCOHOLIC BEVERAGE COMMISSION

*Texans Helping Businesses & Protecting Communities*

**Kevin J. Lilly**  
*Presiding Officer – Houston*

**Ida Clement Steen**  
*Member – San Antonio*

**Commission Member**  
*Vacant*

**A. Bentley Nettles**  
*Executive Director*

March 1, 2019

Office of the Attorney General  
Open Records Division  
P.O. Box 12548  
Austin, Texas 78711-2548

*(Via Interagency Mail on March 1, 2019)*

Re: Rescind Request for Letter Ruling  
TABC PIR Reference No. R000677-02071

Dear Mr. Gordon:

The Texas Alcoholic Beverage Commission (TABC) received a request under the Texas Public Information Act ("PIA") from Mr. Daniel Stevens on February 7, 2019. On February 22, TABC requested a letter ruling.

Please consider our request for letter ruling withdrawn. We will produce all responsive records.

Thank you for your time and attention to this matter. Should you have any questions or require additional information, please feel free to contact me by phone at (512) 206-3223 or by e-mail at [raika.rowe@tabc.texas.gov](mailto:raika.rowe@tabc.texas.gov).

Sincerely,

Raika Rowe  
Public Information Coordinator  
Office of the General Counsel  
Texas Alcoholic Beverage Commission

Cc: Mr. Daniel Stevens (Requestor)  
*Via email / TABC Open Records Center*