



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 14, 1995

Ms. Cathy Cunningham
Senior Assistant City Attorney
City of Irving
P.O. Box 152288
Irving, Texas 75015-2288

OR95-954

Dear Ms. Cunningham:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 34264.

The City of Irving (the "city") has received an open records request for documents concerning La Carina Restaurant and/or B.B. Gump's, Inc., including documents concerning a zoning change request. You state that most of the records have been released or made available for inspection. However, the owners of La Carina wish to withhold the following information submitted to the city in compliance with its zoning ordinance: "Copies of all applications and information filed or to be filed with the State of Texas for a mixed beverage or private club permit."

Section 5.48 of the Alcoholic Beverage Code provides as follows:

(a) "Private records,"¹ as used in this section, means all records of a permittee, licensee, or other person other than the name, proposed location, and type of permit or license sought in an application for an original or renewal permit or license

¹Section 5.47 provides that records of violations of the Alcoholic Beverage Code by permittees and licensees, records introduced and made public at hearings and decisions resulting from hearings on violations are open to the public.

(b) The private records of a permittee, licensee, or other person that are required or obtained by the commission or its agents, in connection with an investigation or otherwise, are privileged unless introduced in evidence in a hearing before the commission or before a court in this state or the United States.

This office has held that the Alcoholic Beverage Commission may disclose a permittee's privileged records to "any officer of this state charged with the enforcement of its laws," but not to the general public. Attorney General Opinion M-213 (1968). In the present case, the city has become the custodian of the records pursuant to a requirement of its zoning ordinance. We doubt that the legislature contemplated that the permittee might be required to waive the privilege created by section 5.48 of the Alcoholic Beverage Code as a condition of applying for a zoning change. We conclude that the permittee may raise the section 5.48 privilege in this case and that the city must withhold from public disclosure the "private" records that are privileged by that section. The information that section 5.48 excepts from the privilege must be disclosed.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Susan L. Garrison
Assistant Attorney General
Open Records Division

SLG/KHG/rho

Ref.: ID# 34264

Enclosures: Submitted documents

cc: Mr. Paul Craig Laird II
Ashley and Laird, L.C.
800 West Airport Freeway, Suite 917
Lock Box 6015
Irving, Texas 75062
(w/o enclosures)

Mr. Chris Caso
Power & Deatherage
1311 West Irving Boulevard
Irving, Texas 75061-7220
(w/o enclosures)