



Office of the Attorney General
State of Texas

January 14, 1997

DAN MORALES
ATTORNEY GENERAL

Mr. Lou Bright
General Counsel
Texas Alcoholic Beverage Commission
P.O. Box 13127
Austin, Texas 78711-3127

OR97-0055

Dear Mr. Bright:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 102919.

The Texas Alcoholic Beverage Commission ("TABC") received a request for the job description of a TABC agent and all records regarding a specific alcohol seller training school and its owner. You state that you have provided all of the requested information to the requestor except the evaluations of the training school. You explain that the TABC conducted the evaluations pursuant to section 106.14 of the Alcoholic Beverage Code. Section 106.14 authorizes the TABC to license and regulate these seller training programs. You ask whether the requested evaluations are confidential under section 552.101 of the Government Code in conjunction with section 5.48 of the Alcoholic Beverage Code. You have submitted the evaluations for our review.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 5.48 of the Alcoholic Beverage Code provides as follows:

(a) "Private records," 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, or in a periodic report relating to the importation, distribution, or sale of alcoholic beverages required by the commission to be regularly filed by a permittee or licensee.

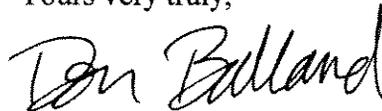
(b) The private records of a permittee, licensee, or other person that are required or obtained by the commission or its agents, in connection with an investigation or otherwise, are privileged unless introduced in evidence in a hearing before the commission or

before a court in this state of the United States.

The term "privileged" in this statute has been construed to mean "confidential" for purposes of the Open Records Act. Attorney General Opinion JM-1235 (1990) at 2; Open Records Decision Nos. 186 (1978), 62 (1974). Thus, section 5.48 makes confidential any records required or obtained by the TABC, with the exception of "the name, proposed location, and type of permit or license sought in any application for a permit or license or any renewal thereof" and "any periodic report covering the importation, distribution, or sale of any alcoholic beverages required by the Board to be regularly filed by a permittee or licensee." Open Records Letter No. 95-258 (1995). In this case, however, the documents at issue do not appear to be "private records" of a permittee or licensee. The documents were prepared by the TABC in connection with its regulatory authority over the seller training school. They are not records that are required or obtained by the commission from a permittee or licensee. Consequently, we do not believe that the requested evaluations are made confidential by section 5.48 of the Alcoholic Beverage Code. *Cf.* Open Records Decision Nos. 186 (1978) (licensee bank account records), 62 (1974) (certain licensee application information). The TABC must release this information.

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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref: ID# 102919

Enclosures: Submitted documents

cc: Ms. Lisa Haines
Howie & Sweeney
2911 Turtle Creek Blvd., Ste. 1400
Park Place on Turtle Creek
Dallas, Texas 75219
(w/o enclosures)