



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 20, 1997

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

OR97-1151

Dear Mr. Bright:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 105837.

The Texas Alcoholic Beverage Commission ("TABC") received an open records request for "any documents contained in your files that reference and/or refer to (1) the lease or any provisions of the lease including without limitation square footage, description of the premises, etc.; (2) the leased premises. The request would encompass copies of any leases in your files that reference the location." Pursuant to the Alcoholic Beverage Code, records of the TABC regarding permittees are confidential, except for certain information which is not at issue in this request. ALCO. BEV. CODE § 5.48. You assert that ordinarily this information is confidential under section 5.48 of the Alcoholic Beverage Code, in conjunction with section 552.101 of the Government Code. But, you also observe that the requesting party is seeking to obtain a copy of the contract to which it is a signator, a fact which now raises the present issue: whether the requestor's signatory status imbues the requestor with a special right of access to the document by virtue of § 552.023 of the Government Code. We note your exception and have reviewed your documents.

Section 552.023 of the Open Records Act provides, in subsection (a):

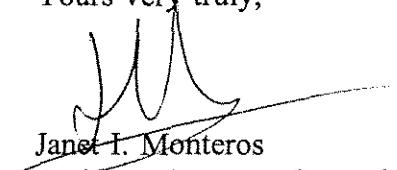
A person or the authorized representative of a person has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests.

The fact that the information is deemed confidential by privacy principles under the Open Records Act does not grant the governmental body the right to deny access to the person, or the person's representative, to whom the information relates. However, where information is withheld from public disclosure pursuant to laws intended to protect more than privacy interests, section 552.023 may not be invoked. *See* Open Records Decision Nos. 587 (1991), 565 (1990) (provisions of Medical Practices Act making medical records confidential are intended to protect more than just the privacy interests of the patient).

We believe that the provisions of section 5.48 of the Alcoholic Beverage Code are intended to do more than protect privacy interests, as the language itself indicates that the private records may be obtained by the TABC or its agents in instances involving an investigation. *See* ALCO. BEV. CODE § 5.48(b). This conclusion is supported by the public policy provision of the Alcoholic Beverage Code, section 1.03, which provides that the code is an exercise of the police power of the state for the protection of the welfare, health, peace, temperance, and safety of the people of the state. We observe that violations of the TABC's regulations or statutes may result in a complaint filed with the agency or in judicial proceedings pursued by a local county or district attorney or attorney general. ALCO. BEV. CODE §§ 101.01 *et seq.* Thus, in our opinion, section 5.48 of the Alcoholic Beverage Code protects more than privacy interests as it is also used to protect investigative interests in the TABC's enforcement actions. Consequently, section 552.023 of the Open Records Act would not provide special rights of access to the information in question and you must withhold the information.¹

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 may 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,



Janet I. Monteros
Assistant Attorney General
Open Records Division

¹This office has previously construed the term "privileged" in the predecessor to section 5.48 of the Alcoholic Beverage Code to mean "confidential" for purposes of chapter 552 of the Government Code. *See* Attorney General Opinion JM-1235 (1990) at 2; Open Records Decision Nos. 186 (1978), 62 (1974). Consequently we do not address the distinction between privilege and confidentiality.

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JIM/glg

Ref.: ID# 105837

Enclosures: Submitted documents

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(w/o enclosures)

