



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 16, 2009

Ms. Rebecca Brewer
Abernathy, Roeder, Boyd & Joplin, P.C.
Attorney for City of Frisco
P.O. Box 1210
McKinney, Texas 75070-1210

OR2009-13080

Dear Ms. Brewer:

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# 355547.

The City of Frisco (the "city"), which you represent, received a request for a copy of all alcohol applications for pending or granted permits in a specified area. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information made confidential by other statutes. 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 [Alcoholic Beverage Commission (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 or the United States.

Alco. Bev. Code § 5.48. With the exception of certain information, section 5.48 makes confidential all “private records” of a permittee, licensee, or other person required or obtained by the commission or its agents. *See id.* The information at issue consists of pre-qualification documentation for an off-premise license or permit and accompanying cover letters collected and maintained by the city, not the commission. Although this office has previously found that information filed with the commission may be transferred to certain public officials without violating the confidentiality of section 5.48, the submitted cover letters show the pre-qualification documentation was sent directly to the city, and not transferred by the commission. *See* Attorney General Opinion JM-590 (1986); *see also* Open Records Decision No. 661 at 1 (1990). Finally, although the protection of section 5.48 applies to “private records” collected or maintained by the commission’s agents, you provide no arguments explaining how the city is acting as an agent of the commission in collecting or maintaining the information at issue. Accordingly, we find you have failed to demonstrate the applicability of section 5.48 of the Alcoholic Beverage Code to the submitted information, and it may not be withheld under section 552.101 on that basis.

We note a portion of the submitted information is excepted from public disclosure under section 552.130 of the Government Code.¹ Section 552.130 excepts from disclosure “information [that] relates to . . . a motor vehicle operator’s or driver’s license issued by an agency of this state [.]” Gov’t Code § 552.130(a)(1). Accordingly, the city must withhold the Texas driver’s license numbers we have marked pursuant to section 552.130 of the Government Code.

We also note the submitted information includes an e-mail address that is subject to section 552.137 of the Government Code. Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). The e-mail address in the submitted information is not of a type specifically excluded by section 552.137(c). *See* Act of May 15, 2001, 77th Leg., R.S., ch. 356, § 1, 2001 Tex. Gen. Laws 651, 651–52, *amended by* Act of May 27, 2009, 81st Leg., R.S., ch. 962, § 7, 2009 Tex. Sess. Law Serv. 2555, 2557 (Vernon) (to be codified as an amendment to Gov’t Code § 552.137(c)). As such, this e-mail address must be withheld

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

under section 552.137, unless the owner of the address has affirmatively consented to its release.

In summary, the city must withhold the Texas driver's license numbers we have marked under section 552.130 of the Government Code. The city must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the e-mail address has affirmatively consented to its release. The remaining information must be released.²

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 http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/rl

Ref: ID# 355547

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

²We note the remaining information contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.