



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 30, 2009

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

OR2009-13748

Dear Mr. Bright:

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# 357358.

The Texas Alcoholic Beverage Commission (the "commission") received a request for "leases, consent letters from owner, and all other papers submitted by Applicant and all permits or licenses to sell alcoholic beverages" at a specified address during a specified time period. You state that the commission has released some of the requested information to the requestor. 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 representative sample of information.¹

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:

¹We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and, therefore, does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

(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 or the United States.

Alco. Bev. Code § 5.48. The term "privileged" in this statute has been construed to mean "confidential" for purposes of the Act. Attorney General Opinion JM-1235 at 2 (1990); Open Records Decision Nos. 186 (1978), 62 (1974).

The information at issue consists of temporary licenses, applications, and other records submitted by a permittee to the commission. You state that "none of the records in question have been submitted as evidence in an administrative hearing or otherwise." Based on your representations and our review of the submitted information, we agree that this information consists of "private records" that are privileged under section 5.48 of the Alcoholic Beverage Code.

The requestor asserts, however, that his client has a special right of access to the requested information under section 552.023 of the Government Code because the requestor's client is a part owner of the property to which the request pertains. Section 552.023 provides in part that "[a] person or a person's authorized representative 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." Gov't Code § 552.023(a). Thus, information that relates to a person may not be withheld from that person, or his or her authorized representative, on the basis of that person's right to privacy. Gov't Code § 552.023(b). As stated above, the submitted information relates to an individual's applications for permits with the commission. The requestor's client is not the applicant who submitted these documents to the commission. Thus the requestor's client is not the person whose privacy interests are implicated. Furthermore, we are not persuaded the purpose of section 5.48 is to protect a person's privacy interests. This office noted, in discussing a statutory predecessor to section 5.48, that "[t]he public interest in efficient regulation of the liquor industry may be effectively served by encouraging, to the extent possible consistent with the [Texas Liquor Control] Act's purposes and objectives, full disclosure by the licensee to the licensing authority." Attorney General Opinion M-213 at 4 (1968). Thus, the privilege provided by section 5.48 is intended to further the regulatory and law enforcement interests of the

commission. *See* Alco. Bev. Code § 1.03 (code is exercise of state's police power for protection of people's welfare, health, peace, temperance, and safety). Therefore, we conclude that the requestor's client does not have a special right of access to the requested information under section 552.023 of the Government Code. Because the submitted information consists of "private records" to which the requestor's client has no special right of access, the commission must withhold the submitted information in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 5.48 of the Alcoholic Beverage Code.

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,



Jessica Eales
Assistant Attorney General
Open Records Division

JCE/eeg

Ref: ID# 357358

Enc. Submitted documents

c: Requestor
(w/o enclosures)