



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 4, 2015

Mr. Matthew Cherry
Public Information Coordinator
Texas Alcoholic Beverage Commission
P.O. Box 13127
Austin, Texas 78711-3127

OR2015-10969

Dear Mr. Cherry:

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# 566036.

The Texas Alcoholic Beverage Commission (the "commission") received a request for copies of applications filed with the commission for permits at two specified addresses. You state the commission does not have information responsive to the request for a copy of the application filed with the commission for the permit filed at one of the specified addresses.¹ You state you have provided some information to the requestor. You claim 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

¹We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

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 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). Thus, section 5.48 makes confidential any records required or obtained by the commission, with the exception of "the name, proposed location, and type of permit or license sought in an application for an original or renewal permit or license" and "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." Alco. Bev. Code § 5.48.

The submitted information consists of original and renewal applications, and their supplements, submitted by a permittee to the commission. You state you have released the name, proposed location, and type of permit sought in the applications to the requestor. You further state none of the submitted information has been introduced as evidence in a hearing before the commission or before a court in Texas or the United States. Based on your representations and our review, we agree the submitted information constitutes private records under section 5.48 of the Alcoholic Beverage Code. Accordingly, the commission must withhold the submitted information in its entirety under 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.texasattorneygeneral.gov/open/>

[orl_ruling_info.shtml](#), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Joseph Behnke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 566036

Enc. Submitted documents

c: Requestor
(w/o enclosures)