



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 25, 2015

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

OR2015-12668

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# 568778.

The Texas Alcoholic Beverage Commission (the "commission") received a request for nine categories of information pertaining to the "one share standard" and commission employment matters.¹ You state you will release some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from

¹You note the commission sought and received clarification of the request. *See* Gov't Code § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify the request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

a representative for the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note you have not submitted any information responsive to Item 1, Section F and Item 2, Section B of the clarified request. Although you state the commission submitted a representative sample of the requested information, we find the submitted information is not representative of all the types of information to which the requestor seeks access. Please be advised this open records letter ruling applies to only the types of information you have submitted for our review. This ruling does not authorize the commission to withhold any information that is substantially different from the type of information you submitted to this office. *See id.* § 552.302. Therefore, to the extent information responsive to Item 1, Section F and Item 2, Section B of the clarified request exists and was maintained by the commission on the date it received the request, we assume the commission has released it to the requestor. If the commission has not released any such information, it must do so at this time. *Id.* §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

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 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 application records submitted by permittees to the commission. You 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.

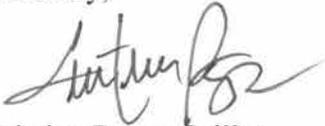
The representative for the requestor asserts, however, that his client has a special right of access to the some of the requested information under section 552.023 of the Government Code because the requestor is an applicant for a permit. Section 552.023 provides in part that “[a] person or a person’s 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. *Id.* § 552.023(b). As stated above, the submitted information relates to applications for permits with the commission. 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 does not have a special right of access to the requested information under section 552.023 of the Government Code. Accordingly, with the exception of the name, proposed location, and type of permit sought in the applications, which must be released, 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,

A handwritten signature in black ink, appearing to read 'Cristian Rosas-Grillet', written in a cursive style.

Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/cbz

Ref: ID# 568778

Enc. Submitted documents

c: Requestor
(w/o enclosures)