



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 13, 2015

Ms. Emily E. Helm
General Counsel
Texas Alcoholic Beverage Commission
P.O. Box 13127
Austin, Texas 78711

OR2015-21372

Dear Ms. Helm:

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# 583082.

The Texas Alcoholic Beverage Commission (the "commission") received a request for information pertaining to "tied house" tier or "overlapping ownership" violations of the Alcoholic Beverage Code. The commission claims the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception 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 section 5.48 of the Alcoholic Beverage Code, which 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

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.

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. This office has construed the term “privileged” in this statute 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 commission states the submitted documents consist of records it required or obtained in evaluating an applicant who publicly traded for cross tier/overlapping ownership interests. The commission indicates it will not withhold any information that has been introduced in a hearing before it, a court in Texas, or a court in the United States. *See id.* Upon review, we find some of the submitted information, which we have marked, consists of private records under section 5.48 of the Alcoholic Beverage Code. Accordingly, with the exception of the name, proposed location, and type of permit sought in the applications at issue, which the commission must release, the commission must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 5.48 of the Alcoholic Beverage Code. However, the remaining documents do not consist of “private records” of a permittee, licensee, or other person required or obtained by the commission for purposes of section 5.48. Therefore, the remaining information is not confidential under section 5.48, and the commission may not withhold it under section 552.101 on that ground. Thus, the commission must release the remaining information to the requestor.

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 pGeneral, toll free, at (888) 672-6787.

Sincerely,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/cbz

Ref: ID# 583082

Enc. Submitted documents

c: Requestor
(w/o enclosures)