



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 14, 2015

Ms. Emily E. Helm
General Counsel
Texas Alcoholic Beverage Commission
P.O. Box 13127
Austin, Texas 78711-3127

OR2015-26268

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# 590655.

The Texas Alcoholic Beverage Commission (the "commission") received a request for information pertaining to two specified businesses. You state the commission does not have information responsive to a portion of the request.¹ You claim the submitted information is exempted from disclosure under section 552.101 of the Government Code.² We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ disn'd); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

²Although the commission raised section 552.103, 552.106, 552.107, 552.108, and 552.111 of the Government Code, it makes no arguments to support these exceptions. Therefore, we assume the commission has withdrawn its claim these sections apply to the submitted information. *See* Gov't Code §§ 552.301, .302.

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.

You state the submitted information pertain to territorial agreements of a license distributor that are required to be filed with the commission pursuant to section 102.51 of the Alcoholic Beverage Code. You also inform us, to the commission's knowledge, the submitted information has not been introduced in evidence in a hearing before the commission or before a court. Based on your representations and our review, we agree the information at issue constitutes private records under section 5.48 of the Alcoholic Beverage Code. Accordingly, the commission must withhold the submitted information under section 552.101 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,



Katelyn Blackburn-Rader
Assistant Attorney General
Open Records Division

KB-R/akg

Ref: ID# 590655

Enc. Submitted documents

c: Requestor
(w/o enclosures)