



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 5, 2016

Ms. Dina Powell
Legal Assistant
Texas Alcoholic Beverage Commission
P.O. Box 13127
Austin, Texas 78711-3127

OR2016-10253

Dear Ms. Powell:

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# 608761.

The Texas Alcoholic Beverage Commission (the "commission") received a request for five categories of information pertaining to a specified entity. We understand the commission will release some information. The commission claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the commission claims 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

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.

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 commission states the submitted information consists of private records the permittee provided to the commission during the course of the investigation at issue. The commission also informs us, to its knowledge, the submitted information has not been introduced in evidence in a hearing before the commission or before a court. Based on the commission’s 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,

A handwritten signature in black ink, appearing to be 'RH', is located above the typed name.

Rahat Huq
Assistant Attorney General
Open Records Division

RSH/som

Ref: ID# 608761

Enc. Submitted documents

c: Requestor
(w/o enclosures)