



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 2, 2015

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

OR2015-20722

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# 581734.

The Texas Alcoholic Beverage Commission (the "commission") received a request for specified settlement agreements, the exhibits pertaining to specified complaints, and any reports, findings, and recommendations pertaining to specified complaints.¹ You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have also received and considered comments from the requestor. *See Gov't Code* § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

We understand the requestor, in comments submitted to this office, to contend the information the commission has submitted as responsive to the instant request was also

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

responsive to a prior request for information the requestor made on February 2, 2015, for which the commission sought a ruling from this office. Thus, the requestor asserts the commission failed to comply with the procedural requirements of section 552.301 of the Government Code because it did not timely seek a decision to withhold the information at issue in response to the requestor's previous request. The requestor has submitted a copy of her February 2, 2015 request for information with her comments.

The February 2, 2015, request seeks nine categories of information related to specified complaints. The commission contends, and has provided documentation demonstrating, the requestor narrowed her February 2, 2015, request on February 23, 2015. The present request, which was received by the commission on July 16, 2015, seeks the information that was excluded by the requestor in the February 23, 2015, narrowed request. The requestor asserts that the records at issue in the July 16, 2015 request were responsive to her February 23, 2015, narrowed request. We note a governmental body must make a good-faith effort to relate a request for information to responsive information that is within the governmental body's possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). We find the commission made a good-faith effort to relate the request for information to responsive information within its possession or control. *See* ORD 561 at 8-9. Because the information responsive to the present request is not responsive to the February 23, 2015, narrowed request, there is no section 552.301(b) violation. *See* Gov't Code § 552.301(b). Accordingly we will address the commission's arguments against disclosure of 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." *Id.* § 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 interoffice communications, information obtained by the commission from permittees or licensees in connection with administrative investigations, and research reports created by 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 some of the submitted information constitutes private records that are generally confidential under section 5.48 of the Alcoholic Beverage Code.

However, you state the submitted information “pertain[s] to administrative violations given to [third parties]” and “may be deemed open to the public pursuant to [section 5.47 of the Alcoholic Beverage Code].” Additionally, we note the requestor, in comments submitted to this office, contends the submitted information is subject to section 5.47. Section 5.47 provides as follows:

Records of all violations of this code by permittees and licensees, records introduced and made public at hearings, and decisions resulting from the hearings relating to the violations shall be kept on file at the office of the commission in the city of Austin. The records are open to the public.

Id. § 5.47. Open Records Decision No. 186 (1978) held that the predecessor statute to section 5.47 of the Alcoholic Beverage Code was intended to make public those records of all violations by permittees and licensees that had previously been privileged. This holding indicates that records of all violations of the Alcoholic Beverage Code by permittees are public even if they are not introduced in a hearing. The information at issue in Open Records Decision No. 186 included interoffice communications, which were found, among other items, to constitute records of violations by a holder of a permit which are expressly made public by section 5.47 of the Alcoholic Beverage Code. Based on your representation and our review, we find section 5.47 is applicable to the information we have marked. Accordingly, the information we have marked is expressly public, and the commission may not withhold any portion of this information under section 5.48 of the Alcoholic Beverage Code. We find the commission must release the information we have marked under section 5.47 of the Alcoholic Beverage Code. However, upon review, we find the remaining information does not constitute a record of a violation by a holder of a permit. The remaining information constitutes private records under section 5.48 of the Alcoholic

Beverage Code and must be withheld under section 552.101 of the Government Code on that basis.²

The commission contends the information we have marked is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. As previously noted, section 5.47 of the Alcoholic Beverage Code makes the marked information expressly public. We note information that a statute specifically makes public generally may not be withheld from the public under any of the Act's exceptions to public disclosure. *See, e.g.*, Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976). Therefore, the commission may not withhold the information subject to section 5.47 of the Alcoholic Beverage Code under section 552.103 or section 552.108 of the Government Code.

In summary, the commission must release the information we have marked under section 5.47 of the Alcoholic Beverage Code. The commission must withhold the remaining information 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,



Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/som

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Ref: ID# 581734

Enc. Submitted documents

c: Requestor
(w/o enclosures)