



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 31, 2016

Ms. Sarah Wolfe
Attorney
Texas Alcoholic and Beverage Commission
P.O. Box 13127
Austin, Texas 78711

OR2016-12218

Dear Ms. Wolfe:

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# 612731 (TABC Reference No. 1435335204).

The Texas Alcoholic and Beverage Commission (the "commission") received a request for information pertaining to enforcement actions taken against any licensed manufacturer of alcoholic beverages. You state you will release some information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have also received comments from the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released). We have considered the submitted arguments and reviewed 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.*

¹We note the commission did not comply with the requirements of section 552.301 of the Government Code. *See* Gov't Code § 552.301(b), (e). Nevertheless, section 552.101 of the Government Code is a mandatory exception that can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301. *See id.* §§ 552.007, .302. Thus, we will consider the commission's claim under that section.

§ 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.

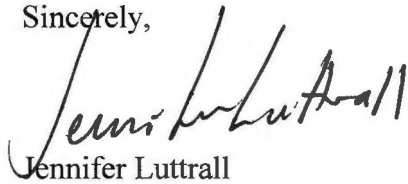
You state the submitted information consists of private records provided by permittees to the commission during the course of the investigation at issue. You state none of the information at issue has been introduced as evidence in a hearing before the commission or before a court in Texas or the United 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. Accordingly, the commission must withhold the submitted 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,

A handwritten signature in black ink, appearing to read "Jennifer Luttrall". The signature is fluid and cursive, with the first name "Jennifer" written in a larger, more prominent script than the last name "Luttrall".

Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 612731

Enc. Submitted documents

c: Requestor
(w/o enclosures)