



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 24, 2017

Ms. Julie Allen  
Assistant General Counsel  
Texas Alcoholic Beverage Commission  
P.O. Box 13127  
Austin, Texas 78711

OR2017-06068

Dear Ms. Allen:

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# 650343 (Reference No. 1515011110).

The Texas Alcoholic Beverage Commission (the "commission") received a request for the application, supporting documents, and all records pertaining to a specified establishment. You state the commission has released some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>2</sup>

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<sup>1</sup>We note, and you acknowledge, the commission failed to comply with the procedural requirements of section 552.301(b) and (e) of the Government Code by failing to meet its 10-business-day and 15-business day deadlines. *See* Gov't Code § 552.301(b), (e). Nonetheless, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

<sup>2</sup>We 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.

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 Code § 552.101. This section encompasses information made confidential by 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 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 Exhibit C consists of application and renewal records of a permit or license. You state none of the information in Exhibit C 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 portions of Exhibit C, which we have marked, constitute 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 relevant applications, which must be released, the commission must withhold the information we marked in Exhibit C under section 552.101 of the Government Code in conjunction with section 5.48 of the Alcoholic Beverage Code.

However, we find the commission has not established any of the remaining information at issue consists 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 basis. Accordingly, the commission must release the remaining information.

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](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,



Kieran Hillis  
Assistant Attorney General  
Open Records Division

KH/sb

Ref: ID# 650343

Enc. Submitted documents

c: Requestor  
(w/o enclosures)