



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 20, 2017

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

OR2017-08485

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# 654610 (TABC No. 1480692758).

The Texas Alcoholic Beverage Commission (the "commission") received a request for information pertaining to a specified business.<sup>1</sup> You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note some of the submitted information is not responsive to the request for information because it was created after the date the commission received the request. This ruling does not address the public availability of any information that is not responsive to the request, and the department is not required to release this information in response to this request.

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<sup>1</sup>We note the commission sought clarification of the information requested. *See* Gov't Code § 552.222(b) (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 that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

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 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 submitted information consists of application records for an original or renewal permit or license submitted by a permittee to 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 the submitted information constitutes private records under section 5.48 of the Alcoholic Beverage Code.

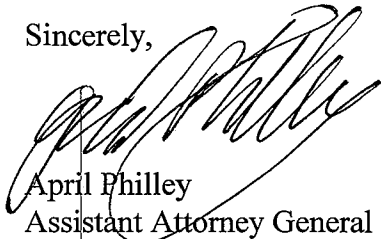
However, the commission states it is uncertain whether the requestor has a special right of access to the requested information under section 552.023 of the Government Code. Section 552.023 provides in part that “[a] person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests.” Gov’t Code § 552.023(a). Thus, information that relates to a person may not be withheld from that person on the basis of that person’s right to privacy. *Id.* § 552.023(b). As stated above, the submitted information relates to an application for an original or renewal permit or license with the commission.

We are not persuaded the purpose of section 5.48 is to protect a person's privacy interests. This office noted, in discussing a statutory predecessor to section 5.48, that "[t]he public interest in efficient regulation of the liquor industry may be effectively served by encouraging, to the extent possible consistent with the [Texas Liquor Control] Act's purposes and objectives, full disclosure by the licensee to the licensing authority." Attorney General Opinion M-213 at 4 (1968). Thus, the privilege provided by section 5.48 is intended to further the regulatory and law enforcement interests of the commission. *See* Alco. Bev. Code § 1.03 (code is exercise of state's police power for protection of people's welfare, health, peace, temperance, and safety). Therefore, we conclude that the requestor does not have a special right of access to the requested information under section 552.023 of the Government Code. Accordingly, with the exception of the name, proposed location, and type of permit sought in the applications, which must be released, the commission must withhold the submitted information in its entirety 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](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,



April Philley  
Assistant Attorney General  
Open Records Division

AP/sb

Ref: ID# 654610

Enc. Submitted documents

c: Requestor  
(w/o enclosures)