



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 17, 2017

Ms. Julie Allen  
Assistant General Counsel  
Texas Alcoholic Beverage Commission  
P. O. Box 13127  
Austin, Texas 78711-3127

OR2017-10674

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# 658059 (TABC Reference ID No. 238953743).

The Texas Alcoholic Beverage Commission (the "commission") received a request for information pertaining to a specified establishment over a specified period of time.<sup>1</sup> You state you are releasing some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. You also state you notified the City of Fort Worth (the "city") of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from the city. We have considered the submitted arguments and reviewed the submitted information.

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<sup>1</sup>You state the commission sought and received clarification of the request for information. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (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).

Initially, we note the city argues against the release of information that was not submitted by the commission. This ruling does not address information that was not submitted by the commission and is limited to the information the commission has submitted for our review. *See id.* § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested).

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 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.

The commission states Exhibit C consists of private records as defined by section 5.48 of the Alcoholic Beverage Code. The commission states none of 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 the commission’s representations and our review, we agree Exhibit C constitutes private records under section 5.48 of the Alcoholic Beverage Code. Accordingly, the commission must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 5.48 of the Alcoholic Beverage Code.

Section 552.108(b)(2) of the Government Code excepts from disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in

matters relating to law enforcement or prosecution . . . if: . . . (2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(b)(2). A governmental body claiming section 552.108(b)(2) must demonstrate the information at issue relates to a concluded criminal case that did not result in a conviction or deferred adjudication. *See id.* § 552.301 (e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state Exhibit D-2 consists of a police report obtained by the commission’s Enforcement Division during a criminal investigation. We note the commission’s Enforcement Division is a law enforcement agency. *See* Alco. Bev. Code §§ 5.14 (commission may commission inspectors with police powers to enforce Alcoholic Beverage Code), .36 (commission shall investigate violations of Alcoholic Beverage Code and other laws relating to alcoholic beverages), .361 (commission shall develop risk-based approach to enforcement). Further, you state Exhibit D-2 pertains to a concluded criminal case that did not result in a conviction or deferred adjudication. Based on your representations, we agree section 552.108(b)(2) is applicable to Exhibit D-2.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic information held to be public in Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, which must be released, the commission may withhold Exhibit D-2 under section 552.108(b)(2) of the Government Code.<sup>2</sup>

In summary, the commission must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 5.48 of the Alcoholic Beverage Code. With the exception of basic information, which must be released, the commission may withhold Exhibit D-2 under section 552.108(b)(2) of the Government 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.

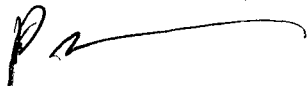
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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 'P. Mehaffy', with a long horizontal flourish extending to the right.

Patrick P. Mehaffy  
Assistant Attorney General  
Open Records Division

PPM/eb

Ref: ID# 658059

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)