



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 12, 2017

Mr. Raikara Rowe
Mr. Matthew Cherry
Texas Alcoholic Beverage Commission
P.O. Box 13127
Austin, Texas 78711-3127

OR2017-20285A

Dear Mr. Rowe and Mr. Cherry:

This office issued Open Records Letter No. 2017-20285 (2017) on September 6, 2017. We have determined the prior ruling should be corrected. *See* Gov't Code §§ 552.306, .352. Accordingly, we hereby withdraw the prior ruling. This decision is substituted for Open Records Letter No. 2017-20285 and serves as the correct ruling. *See generally id.* § 552.011 (Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act"), chapter 552 of the Government Code). This ruling was assigned ID# 683367 (ORR# 172649704).

The Texas Alcoholic Beverage Commission (the "commission") received a request for the names provided on commission applications for four named entities. The commission states it has released some of the requested information, but claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Initially, we note only the submitted names on the applications at issue are responsive to the request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the commission is not required to release this information in response to this request.

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 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. This office has construed the term "privileged" in this statute 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.

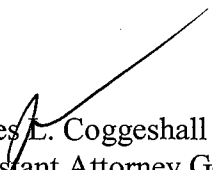
The submitted information consists of L-LLC commission application forms for two of the named entities, which include the responsive names of members and managers of the entities at issue. The commission asserts the responsive names of the members consist of private records of a permittee, licensee, or other person required or obtained by the commission for purposes of section 5.48.¹ It also represents, to its knowledge, this information has not been introduced in evidence in a hearing before the commission or before a court. The commission asserts the responsive names of the members are, thus, confidential under section 5.48. Upon review, we agree the commission must withhold the names of the members at issue, which we have marked, under section 552.101 of the Government Code in conjunction with section 5.48 of the Alcoholic Beverage Code. *See id.*; *see also id.* § 1.04(6) (for purposes of Alcoholic Beverage Code, "person" means "a natural person or association of natural persons, trustee, receiver, partnership, corporation, organization, or the manager, agent, servant, or employee of any of them.")). The commission must release the responsive names of the managers.

¹We note the commission does not assert the responsive names of the managers are confidential under section 5.48. *See* Alco. Bev. Code § 5.48(a).

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/sb

Ref: ID# 683367

Enc. Submitted documents

c: Requestor
(w/o enclosures)