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ATTORNEY GENERAL OF TEXAS

August 20, 2019

Ms. Ruth H. Soucy
Deputy Chief Counsel for Open Records
Texas Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2019-23156

Dear Ms. Soucy:

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# 779177 (Comptroller ID Nos. 3446, 3533, 3450, 3537, 3433, 3539, 3445, 3540, 3427, 3541, 3451, 3542, 3447, 3543, 3431, 3545, 3426, 3546, 3435, 3549, 3440, 3550, 3449, 3551, 3448, 3552, 3439, 3553, 3452, 3453).

The Texas Comptroller of Public Accounts (the "comptroller's office") received thirty requests from two requestors for information related to alcohol sales reports. You state the comptroller's office has released some of the requested information. 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 representative sample of information.¹ We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

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. Section 552.101 encompasses information made confidential by other statutes, including chapter 151 of the Tax Code. Section 151.462 provides in part:

¹ We assume that 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 that those records contain substantially different types of information than that submitted to this office.

(a) The comptroller[’s office] shall require each brewer, manufacturer, wholesaler, distributor, or package store local distributor to file with the comptroller[’s office] a report each month of alcoholic beverage sales to retailers in this state.

(b) Each brewer, manufacturer, wholesaler, distributor, or package store local distributor shall file a separate report for each permit or license held on or before the 25th day of each month. The report must contain the following information for the preceding calendar month’s sales in relation to each retailer:

...

(3) the monthly net sales made by the brewer, manufacturer, wholesaler, distributor, or package store local distributor to the retailer for each outlet or location covered by a separate retail permit or license issued by the Texas Alcoholic Beverage Commission, including separate line items for:

(A) the number of units of alcoholic beverages;

(B) the individual container size and pack of each unit;

(C) the brand name;

(D) the type of beverage, such as distilled spirits, wine, or malt beverage;

(E) the universal product code of the alcoholic beverage; and

(F) the net selling price of the alcoholic beverage.

Tax Code § 151.462(a), (b)(3). With regards to the reports required to be filed by brewers, manufacturers, wholesalers, distributors, and package store local distributors, section 151.464 provides:

Except as provided by Section 111.006 [of the Tax Code], information contained in a report required to be filed by this subchapter is confidential and not subject to disclosure under [the Act].

Id. § 151.464. Section 111.006(h) of the Tax Code, which excepts certain information from the confidentiality of section 151.464, provides the following:

(h) The comptroller[’s office] shall disclose information to a person regarding net sales by quantity, brand, and size that is submitted in a report required under Section 151.462 if:

(1) the person requesting the information holds a permit or license under Chapter 19, 20, 21, 37, 64, 65, or 66, Alcohol Beverage Code; and

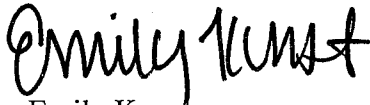
(2) the request relates only to information regarding the sale of a product distributed by the person making the request.

Id. § 111.006(h). You state the submitted information was taken directly from the information required to be reported to the comptroller’s office pursuant to section 151.462(b)(3). *See id.* § 151.462(b)(3). Based on your representations and our review, we find the submitted information is generally confidential pursuant to section 151.464. However, the requestors state, and you acknowledge, they are authorized to receive some of the information at issue pursuant to section 111.006(h). You argue the information the requestors are authorized to receive pursuant to subsection (h) is commingled with confidential information the requestors are not authorized to receive. Further, you assert the comptroller’s office is “unable to extract or segregate the confidential information from the information the requestors are entitled to receive.” However, you have submitted a printed copy of the information at issue, which makes it possible for the comptroller’s office to redact confidential information by marking out the confidential information on the printed documents. Accordingly, the comptroller’s office must withhold the information we marked under section 552.101 in conjunction with section 151.464 and must release the remaining information to these requestors pursuant to section 111.006(h).

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Emily Kunst
Assistant Attorney General
Open Records Division

EK/gw

Ref: ID# 779177

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

c: Third Party
(w/o enclosures)