



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 29, 2022

Ms. Erica Rice
Records Manager
Texas Alcoholic Beverage Commission
P.O. Box 13127
Austin, Texas 78711-3127

OR2022-30173

Dear Ms. Rice:

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# 975564 (TABC Records Request R006275-071922).

The Texas Alcoholic Beverage Commission (the "commission") received a request for all records regarding a specified location during a defined period of time and a specified complaint. 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 you have not submitted information pertaining to the specified complaint. To the extent any information pertaining to the specified complaint existed on the date the commission received the request, we assume the commission has released it. If the commission has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

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 the periodic report relating to the important, distribution, or sale of alcoholic beverages required by TABC 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 TABC or its agents, in connection with an investigation or otherwise, are privileged unless introduced in evidence in a hearing before TABC 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 TABC, 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 information, distribution, or sale of alcoholic beverages required by TABC to be regularly filed by a permittee or licensee.” Alco. Bev. Code § 5.48.

You state the submitted information consists of private records of a permittee. You also state this information has not been introduced in evidence in a hearing before a court. Based on these representations, we conclude, with the exception of the name, proposed location, and type of permit sought in the application and renewal records at issue, which you state you have released, the submitted information must be withheld 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 <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,

Nick Ybarra
Assistant Attorney General
Open Records Division

NY/jm

Ref: ID# 975564

Enc. Submitted documents

c: Requestor
(w/o enclosures)