



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 30, 2022

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

OR2022-37018

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# 986726 (ORR# R006573).

The Texas Alcoholic Beverage Commission (the "commission") received a request for information pertaining to a specified business. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 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 importation, distribution, or sale of alcoholic beverages required by TABC to be regularly filed by a permittee or licensee.” Alco. Bev. Code § 5.48.

The commission explains the information submitted as Exhibit B consists of a permittee file maintained by the Licensing Division. The commission also states this information has not been introduced in evidence in a hearing before it or a court. Based upon these representations and our review, we agree the information at issue constitutes private records under section 5.48 of the Alcoholic Beverage Code. Accordingly, with the exception of the name, proposed location, and type of permit or license sought in the relevant applications, which the commission states will be released, the commission must withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 5.48 of the Alcoholic Beverage Code.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state Exhibit C pertains to an active criminal investigation by the commission’s Enforcement Division. 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). Based on your representation, we conclude the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to Exhibit C.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). The commission states Exhibit D

pertains to a closed criminal investigation conducted by its Enforcement Division that concluded in a finding other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to Exhibit D. Accordingly, the commission may withhold Exhibit D under section 552.108(a)(2).

However, we note, and you acknowledge, 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). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, which you state you will release, the commission may withhold Exhibit C under section 552.108(a)(1) and Exhibit D under section 552.108(a)(2).

In summary, with the exception of the name, proposed location, and type of permit or license sought in the relevant applications, which the commission states will be released, the commission must withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 5.48 of the Alcoholic Beverage Code. With the exception of the basic information, which you state you will release, the commission may withhold Exhibit C under section 552.108(a)(1) of the Government Code and Exhibit D under section 552.108(a)(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 <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,

Anthony Crabtree  
Attorney  
Open Records Division

A1C/eb

Ref: ID# 986726

Enc. Submitted documents

c: Requestor  
(w/o enclosures)