



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 29, 1993

Ms. Gayle Gordon
Texas Alcoholic Beverage Commission
P.O. Box 13127
Austin, Texas 78711-3127

OR93-096

Dear Ms. Gordon:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former V.T.C.S. article 6252-17a).¹ Your request was assigned ID# 18354.

The Texas Alcoholic Beverage Commission (the "commission") has received a request for information relating to a certain retailer licensed by the commission. Specifically, the requestor seeks seven categories of information. You advise us that you have no information responsive to categories 1, 4, and 6.² You further advise that, while you have information responsive to categories 2, 3, and 5, you object to release of that information, which includes:

- 2) The specific application for the Phar-Mor store identified as Store #167, located at 8700 South Gessner in Houston, Texas 77074.

¹The Seventy-Third Legislature repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46, at 988. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

²The Open Records Act does not require a governmental body to make available nonexistent information, Open Records Decision No. 362 (1983), or to compile or prepare new information, Open Records Decision No. 416 (1984). As you do not comment on category 7, we presume that the commission has made or will make the information specified in category 7 available to the requestor. *See* Open Records Decision No. 363 (1983).

- 3) All supplemental documentation associated with the application by Phar-Mor for a license granted by the Texas Alcoholic Beverage Commission.

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- 5) Copies of any and all reports submitted by the Texas Alcoholic Beverage Commission in conjunction with a background investigation conducted by your group as part of the approval process.

You have submitted this information to us for review. You claim that, with the exception of information indicating the name, location, and type of permit sought, former section 3(a)(1) of the Open Records Act (now found at section 552.101 of the Government Code) excepts this information from required public disclosure.

Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 5.48(b) of the Texas Alcoholic Beverage Code provides:

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(b); *see also* § 5.48(a) (defining "private records"). In Open Records Decision No. 186 (1978), this office held that "privileged" in section 5.48 means "confidential" for purposes of the Open Records Act and that former section 3(a)(1) of the Open Records Act therefore excepts from required public disclosure "private records." *See also* Attorney General Opinion JM-1235 (1990). *But see* Open Records Decision Nos. 384 (1983) (holding that determination as to whether "privileged" means "confidential" must be determined from context); 290 (1981) (stating that "privileged" and "confidential" are not necessarily synonymous within context of Open Records Act).

"Private records" as defined in section 5.48(a) of the Alcoholic Beverage Code include the types of records submitted to us for review. Based on our understanding that these records have not been introduced in evidence in a hearing or before a court, we conclude that, other than information indicating the name, proposed location, and type of permit or license sought, section 552.101 of the Government Code, in conjunction with section 5.48(b) of the Alcoholic Beverage Code, authorizes the commission to withhold from public disclosure the documents submitted to us for review.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Rebecca L. Payne
Section Chief
Open Government Section

RLP/KKO/GCK/mc

Ref.: ID# 18354
ID# 18543

Enclosures: Submitted documents

cc: Mr. Colan W. McRae, Jr.
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(w/o enclosures)