



Office of the Attorney General

State of Texas

March 24, 1993

DAN MORALES

ATTORNEY GENERAL

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

OR93-140

Dear Ms. Gordon:

Your predecessor asked whether certain information is subject to required public disclosure under the Texas Open Records Act, V.T.C.S. article 6252-17a. The request was assigned ID# 17561.

The Texas Alcoholic Beverage Commission (the "commission") received a request, dated August 12, 1992, for information concerning violations by permittees and licensees. You inform us that the requestor seeks to review "pending cases that may reasonably lead to administrative enforcement actions." The requestor has informed us by subsequent correspondence, dated October 6, 1992, that he seeks only the "names, addresses and the statute or rule violated by permittees or licensees. [He does] not seek to review agency reports." There is also some controversy over the ten day deadline for seeking an attorney general decision. You indicate that negotiations were proceeding, concerning the request, from August 21, 1992, to September 22, 1992. You subsequently sent us an open records request dated October 2, 1992. The requestor states that he was not involved in any negotiations and that the ten day deadline has passed. We cannot resolve such factual disputes in the open records process. However, since we find the information in question to be public, the question of the ten day deadline need not be addressed.

You claim that information about pending cases concerning violations by licensees and permittees is excepted by section 3(a)(3) of the Open Records Act. You enclose three items of information as responsive to this request: an offense report, a Commission Agreement and Waiver of Hearing, and a Commission Order. As mentioned above, the requestor has indicated that he seeks only "the names [and] addresses [of permittees or licensees] and the statute or rule [which was] violated." This information appears on the offense report, Exhibit B. Thus, we need consider only whether you must release the offense report.

Section 5.47 of the Texas Alcoholic Beverage Code states as follows:

Records of all violations of this [Texas Alcoholic Beverage] code by permittees and licensees, records introduced and made public at hearings, and decisions resulting from the hearings relating to the violations shall be kept on file at the office of the commission in the city of Austin. The records are open to the public. [Emphasis added.]

You say that the offense report is the initial documentation of a violation of the code. The report contains basic information about the violation, with facts to support the alleged violation. We find that the offense report, Exhibit B, is a record of a code violation by a permittee or licensee; thus it is public information. See Open Records Decision Nos. 544 (1990); 186 (1978).¹ Information specifically made public by statute does not come within the 3(a)(3) exception. Open Records Decision Nos. 161 (1977) (condemnation orders); 146 (1976) (election returns). Thus, you must release the offense report.

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 refer to OR93-140.

Yours very truly,



Kay H. Guajardo
Assistant Attorney General
Opinion Committee

KHG/LBC/le

Ref.: ID# 17561

Enclosures: Open Records Decision No. 544
Marked documents

cc: Mr. Lowell Lasley
Lovett, West & Lasley
100 Congress, Suite 2000
Austin, Texas 78701
(w/o enclosures)

¹*Cf. Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.-- Houston [14th Dist.] 1975), writ *ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (information contained on the first page of a police offense report is public information).