



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 16, 1997

Mr. Lou Bright
General Counsel
Texas Alcoholic Beverage Commission
P.O. Box 13127
Austin, Texas 78711-3127

OR97-0859

Dear Mr. Bright:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 105257.

The Texas Alcoholic Beverage Commission ("Commission") received a request for "any and all documents or records of membership and/or guest membership information (i.e., name of member or guest) for the Time Out Gentlemen's Club," which holds a private club registration permit.¹ Section 32.01, *et seq.* of the Alcoholic Beverage Code authorizes the Commission to approve such private clubs. *See also* Alco. Bev. Comm'n Rules § 41.51 *et seq.* Apparently, you have released some of the requested information, however, you seek to withhold the private club's membership list, which you say is maintained by the Commission as part of the permittee's licensing file. You state that the private club at issue submitted the requested information in order to enable the Commission to calculate the private club's annual fees. *See* Alco. Bev. Code § 32.02. You ask whether the submitted information is confidential under section 552.101 of the Government Code, in conjunction with section 5.48 of the Alcoholic Beverage Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 5.48 of the Alcoholic Beverage Code provides as follows:

¹You state that the Commission "does not keep a record of the guests of members or 'guest membership' of a private club." Consequently, we note that chapter 552 does not apply to information that does not exist, *see* Open Records Decision No. 555 (1990), nor does chapter 552 require governmental bodies to prepare new information in response to a request. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio, 1978, writ dismissed). We assume that you have advised the requestor if certain information does not exist.

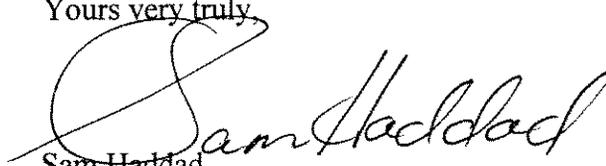
(a) "Private records," as used in this section, means all records of a permittee, licensee, or other person other than the name, proposed location, and type of permit or license sought in an application for an original or renewal permit or license, or in a periodic report relating to the importation, distribution, or sale of alcoholic beverages required by the commission 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 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 of the United States.

The term "privileged" in this statute has been construed to mean "confidential" for purposes of the Open Records Act. Attorney General Opinion JM-1235 (1990) at 2; Open Records Decision Nos. 186 (1978), 62 (1974). Thus, section 5.48 makes confidential any records required or obtained by the Commission, with the exception of "the name, proposed location, and type of permit or license sought in any application for a permit or license or any renewal thereof" and "any periodic report covering the importation, distribution, or sale of any alcoholic beverages required by the Board to be regularly filed by a permittee or licensee." Open Records Letter No. 95-258 (1995). In this case, the document at issue appears to be the "private records" of a permittee or licensee submitted to the Commission in order to obtain approval for its permit application and fee assessment. Therefore, they are records that are "required or obtained by the commission" from a permittee or licensee. Consequently, we believe that the submitted membership list is made confidential by section 5.48 of the Alcoholic Beverage Code. *Cf.* Open Records Decision Nos. 186 (1978) (licensee bank account records), 62 (1974) (certain licensee application information). For the reasons stated above, we conclude that the submitted membership list must not be released pursuant to section 552.101 of the Government Code, in conjunction with section 5.48 of the Alcoholic Beverage Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive style with a large, sweeping initial "S".

Sam Haddad

Assistant Attorney General
Open Records Division

SH/rho

Ref: ID# 105257

Enclosures: Submitted documents

cc: Ms. Sue Batchelor
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(w/o enclosures)

