



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 9, 1998

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

OR98-3032

Dear Mr. Bright:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code (the "Act"). Your request was assigned ID # 119440.

On August 10, 1998 the Alcoholic Beverage Commission (the "Commission") received a request for "any and all agent or agent's reports regarding all alleged offenses where an administrative notice has been served to Mexico Q. Nice." You submit as Attachment B the Commission's response to the requestor's letter, as Attachment C, a copy of the public documents forwarded to the requestor, and as Attachment D, a copy of the records you withheld and about which you are seeking our opinion. You claim that the requested information in Attachments D, D-1, and D-2 are exempt from disclosure under sections 552.101, 552.103, and 552.108 of the Act.

You contend that the documents marked as Attachment D-1 are exempt from disclosure under section 552.101 of the Government Code as "private records" by virtue of section 5.48 of the Alcoholic Beverage Code (the "Code").¹ We agree.

¹"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.

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.

Alcoholic Beverage Code § 5.48(b). See Attorney General Opinion M-213 (1968); Open Records Decisions Nos. 186 (1978); 94, 66 (1975); 62 (1974).

You claim that section 552.108, subsections (a)(1), (2) and/or (b)(1), (2) apply to except from disclosure the information in Attachment D.² These provisions do not apply to publicly filed documents. Documents in Attachment D that were publicly filed with the Secretary of State must be released. Open Records Decision Nos. 551 (1990), 43 (1974). Documents in Attachment D that were publicly filed in a state district court must be released. *Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992).

Section 552.108 provides in relevant part as follows:

(a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if: (1) release of the information would interfere with the detection, investigation or prosecution of crime; [or] (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication. . . .

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if: (1) release of the internal record or notation would interfere with law enforcement or prosecution; (2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication

Gov't Code §552.108. You state that the requested information relates to "several criminal violations, including violations of sections 15.02 and 37.10 of the Penal Code."

²Pursuant to section 5.47 of the Code, records of violations of the Alcoholic Beverage Code (the "Code") are public. However, as you inform us that formal contested proceedings under the Administrative Procedures Act will be instituted soon, and neither a final determination of a violation nor a final administrative order has been issued in this case, section 5.47 of the Code is inapplicable to the information at issue. Therefore, prior to a final determination of a violation or a final administrative order, the Commission may, on a proper showing, withhold materials such as the documents included in Attachments D and D-2 pursuant to exceptions to the Open Records Act.

Based on the records at issue, your statements, and your arguments, we believe that you have shown the applicability of section 552.108(a)(1). *See* Open Records Decision No. 586 (1991). Accordingly, we conclude that the Commission may withhold from the requestor the portions of Attachment D that were not publicly filed.

We note, however, that “basic information about an arrested person, an arrest, or a crime” is not excepted from required public disclosure. Gov’t Code § 552.108(c). Basic information is the type of information that is considered to be front page offense report information even if this information is not actually located on the front page of the offense report.³ *See generally Houston Chronicle Publ’g 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); Open Records Decision No. 127 (1976).

You also claim that the documents included as Attachment D-2 are confidential by law under section 552.101 of the Texas Government Code, protecting from disclosure information covered by the “informers privilege.” We have considered the exception you claim and have reviewed the documents at issue.

The informer’s privilege protects the identities of individuals who report violations of statutes with civil or criminal penalties to “administrative officials having a duty of inspection or of law enforcement within their particular spheres” and those who report violations of statutes to the police or similar law-enforcement agencies. Open Records Decision No. 279 at 2 (1981)(citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961)). In addition to the informant’s name, the informers privilege covers information, such as a telephone number, that would tend to identify the informant. Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5 (1988). Inasmuch as the report must be of a violation of a criminal or civil statute and you have represented that the reports concerned alleged violations of sections 15.02 and 37.10 of the Penal Code, you may withhold the requested information.

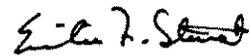
Therefore, we conclude that, except for the front page information and the documents that have been publicly filed, the Commission may withhold the requested information that it seeks to withhold from disclosure under Government Code sections 552.108(a)(1) and 552.101 in conjunction with the informer’s privilege.⁴ Although section 552.108 authorizes you to withhold the remaining requested information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov’t Code § 552.007.

³Basic information in an offense report generally may not be withheld under section 552.103. *Cf.* Open Records Decision No. 597 (1991).

⁴It appears from attachments B and C that you have disclosed the basic information to the requestor.

Because we are able to make a determination under section 552.108 and 552.101, we do not address your other arguments against disclosure. 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,



Emilie F. Stewart
Assistant Attorney General
Open Records Division

EFS\nc

Ref: ID# 119440

Enclosures: Submitted documents

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(w/o enclosures)