



November 29, 1999

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

OR99-3404

Dear Mr. Bright:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 129865.

The Texas Alcoholic Beverage Commission (the "commission") received a request for information related to applications for mixed beverage permits made by Ebbits Norman Entertainment and LMNT Corporation. You have informed the requestor that you have no records for LMNT Corporation. You have supplied the responsive information in your possession to this office for review. You claim that this information is excepted from disclosure 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 of the Government Code 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:

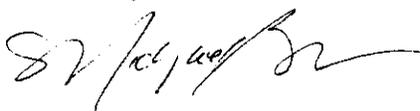
(a) "Private records," as used in this section, means all records of a permittee, licensee, or other person other than the name, proposed location, and type of permit or license sought in an application for an original or renewal permit or license, or in a periodic report relating to the importation,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

The term "privileged" in this statute has been construed to mean "confidential" for purposes of the Public Information 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 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 documents at issue appear to be "private records" obtained in the application process. You also state that the applicant has not been a party to any hearings and that the subject information has therefore never been entered into evidence at any judicial proceeding. Consequently, we agree that the submitted information is made confidential by section 5.48 of the Alcoholic Beverage Code. The commission must withhold the information under section 552.101 of the Government 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.

Sincerely,



Michael J. Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref: ID# 129865

Encl. Submitted documents

cc: Mr. Mark Stuertz
6250 Highgate Lane
Dallas, Texas 75214
(w/o enclosures)