



June 21, 2000

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

OR2000-2378

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# 136405.

The Texas Alcoholic Beverage Commission ("TABC") received a request for "a copy of the original application filed with the TABC by Juan Manuel Gutierrez Cantu for J M C Distributors." You state that you have provided the requestor with the name, location, and types of permits implicated by the request.¹ You claim, however, that the remaining requested information is excepted from required public disclosure by section 552.101 of the Government Code in conjunction with section 5.48 of the Alcoholic Beverage Code. You have submitted the requested permit information for our review.

You argue that original and renewal application information of a permittee is confidential under section 5.48 of the Alcoholic Beverage Code. 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,

¹You indicate that J M C Distributors holds two active TABC permits, a wholesaler's permit and a private carrier's permit. We note that the information in Attachment C, which you indicate has already been released to the requestor, consists of the name, location, and type of permit for J M C Distributer's wholesaler's permit.² It does not appear that you have released the name, location, and type of permit regarding J M C Distributer's private carrier's permit.

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 from a permittee by the TABC, 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. Open Records Decision No. 62 (1974). In this case, the documents at issue appear to be "private records" of a permittee or licensee. You also state that the permittee has not been a party to any hearings. Consequently, we agree that the submitted information is made confidential by section 5.48 of the Alcoholic Beverage Code. The TABC must withhold from disclosure the information submitted as "Attachment D."

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one

of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Carla Gay Dickson
Assistant Attorney General
Open Records Division

CGD/ljp

Ref: ID# 136405

Encl. Submitted documents

cc: Ms. Kelly K. McKinnis
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(w/o enclosures)