



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 9, 2012

Ms. Marivi Gambini
Paralegal
City of Irving
825 West Irving Boulevard
Irving, Texas 75060

OR2012-18123

Dear Ms. Gambini:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 470774.

The City of Irving (the "city") received a request for "the latest report that reflects the ratio of food to alcohol sales at restaurants in the city." You state you have released some of the requested information. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information made confidential by other statutes. 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 [Alcoholic Beverage Commission (the "commission")] to be regularly filed by a permittee or licensee.

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

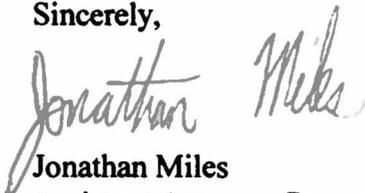
(b) The private records of a permittee, licensee, or other person that are required or obtained by the commission or its agents, in connection with an investigation or otherwise, are privileged unless introduced in evidence in a hearing before the commission or before a court in this state or the United States.

Alco. Bev. Code § 5.48. With the exception of certain information, section 5.48 makes confidential all “private records” of a permittee, licensee, or other person required or obtained by the commission or its agents. *See id.* The information at issue consists of a Restaurant and Alcohol Beverage Report that you state is filed on a monthly basis by restaurants with the Texas Comptroller of Public Accounts (the “comptroller”) and then reported to the city on a quarterly basis. Although this office has previously found that information filed with the commission may be transferred to certain public officials without violating the confidentiality of section 5.48, you inform us the information at issue was provided to the city by the comptroller rather than the commission. *See* Attorney General Opinion JM-590 (1986); *see also* Open Records Decision No. 661 at 1 (1990). Finally, although the protection of section 5.48 applies to “private records” collected or maintained by the commission’s agents, you provide no arguments explaining how the city is acting as an agent of the commission with regard to the information at issue. Accordingly, we find you have failed to demonstrate the applicability of section 5.48 of the Alcoholic Beverage Code to any of the submitted information, and it may not be withheld under section 552.101 on that basis. As you raise no further arguments, the submitted information be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/bhf

Ref: ID# 470774

Enc. Submitted documents

c: Requestor
(w/o enclosures)