



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 3, 2013

Ms. Ruth H. Soucy
Deputy General Counsel for Open Records
Texas Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2013-15305

Dear Ms. Soucy:

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# 498221 (Comptroller ID Nos. 9241250174 and 9241257531).

The Texas Comptroller of Public Accounts (the "comptroller's office") received two requests from the same requestor for a list of universal product codes in the comptroller's reporting system database relating to two named brands. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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. Section 552.101 encompasses information made confidential by other statutes, including chapter 151 of the Tax Code. Section 151.462 provides in part:

(a) The comptroller[']s office] shall require each brewer, manufacturer, wholesaler, distributor, or package store local distributor to file with the comptroller[']s office] a report each month of alcoholic beverage sales to retailers in this state.

(b) Each brewer, manufacturer, wholesaler, distributor, or package store local distributor shall file a separate report for each permit or license held on or

before the 25th day of each month. The report must contain the following information for the preceding calendar month's sales in relation to each retailer:

...

(3) the monthly net sales made by the brewer, manufacturer, wholesaler, distributor, or package store local distributor to the retailer for each outlet or location covered by a separate retail permit or license issued by the Texas Alcoholic Beverage Commission, including separate line items for:

- (A) the number of units of alcoholic beverages;
- (B) the individual container size and pack of each unit;
- (C) the brand name;
- (D) the type of beverage, such as distilled spirits, wine, or malt beverage;
- (E) the universal product code of the alcoholic beverage; and
- (F) the net selling price of the alcoholic beverage.

Tax Code § 151.462(a), (b)(3). With regards to the reports required to be filed by brewers, manufacturers, wholesalers, distributors, and package store local distributors, section 151.464 provides:

Except as provided by Section 111.006 [of the Tax Code], information contained in a report required to be filed by this subchapter is confidential and not subject to disclosure under [the Act].

Id. § 151.464. Section 111.006(h) of the Tax Code, which excepts certain information from the confidentiality of section 151.454, provides the following:

(h) The comptroller[']s office] shall disclose information to a person regarding net sales by quantity, brand, and size that is submitted in a report required under Section 151.462 if:

- (1) the person requesting the information holds a permit or license under Chapter 19, 20, 21, 37, 64, 65, or 66, Alcohol Beverage Code; and
- (2) the request relates only to information regarding the sale of a product distributed by the person making the request.

Id. § 111.006(h). You state the submitted universal product code information was taken directly from the information required to be reported to the comptroller's office pursuant to section 151.462(b)(3)(E). *See id.* § 151.462(b)(3)(E). The requestor states he has previously submitted to the comptroller's office a form from the distributors of each specified brand authorizing him to receive sales report data; thus making the requestor a person authorized to receive information pursuant to section 111.006(h). However, you argue, regardless of whether the requestor is authorized to receive information pursuant to section 111.006(h), the exceptions to confidentiality provided in section 111.006(h) are limited to net sales information by "quantity, brand, and size," and not universal product code information. Upon review, we agree the submitted universal product code information is not one of the categories of information that falls within an exception to confidentiality under section 111.006(h). Based on your representations and our review, we conclude the comptroller's office must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 151.464 of the Tax Code.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

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Ref: ID# 498221

Enc. Submitted documents

c: Requestor
(w/o enclosures)