



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 26, 2016

Mr. Matthew Cherry  
Public Information Coordinator  
Texas Alcoholic Beverage Commission  
P.O. Box 13127  
Austin, Texas 78711-3127

OR2016-04636

Dear Mr. Cherry:

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# 600283.

The Texas Alcoholic Beverage Commission (the "commission") received a request for ten categories of information, including information relating to three named employees and a specified conference. The commission states it will release some of the requested information. We understand the commission has redacted information pursuant to sections 552.024(c)<sup>1</sup> and 552.136(c)<sup>2</sup> of the Government Code. The commission claims some of the submitted information is excepted from disclosure under section 552.101 of the

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<sup>1</sup>Section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee or official to whom the information pertains timely chooses not to allow public access to the information. *See* Gov't Code § 552.024(c)(2).

<sup>2</sup>Section 552.136 of the Government Code permits a governmental body to withhold the information described in section 552.136(b) without the necessity of seeking a decision from this office. *See* Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

Government Code.<sup>3</sup> We have considered the exception the commission claims 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. This section encompasses section 5.48 of the Alcoholic Beverage Code, which 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 permittee 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.

Alco. Bev. Code § 5.48. This office has construed the term “privileged” in this statute to mean “confidential” for purposes of the 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 an application for an original or renewal permit or license” and “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.” Alco. Bev. Code § 5.48.

The commission raises section 5.48 of the Alcohol Beverage Code for some of the submitted information. We note the submitted information consists of personnel documents. Upon review, we find the submitted documents do not consist of “private records” of a permittee, licensee, or other person required or obtained by the commission for purposes of section 5.48. Therefore, the submitted information is not confidential under section 5.48, and the commission may not withhold it under section 552.101 on that ground. The commission must release the submitted information.

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<sup>3</sup>Although the commission raises sections 552.103, 552.106, 552.107, 552.108, and 552.111 of the Government Code, it makes no arguments to support these exceptions. Therefore, we assume the commission has withdrawn its claims under these sections. *See* Gov’t Code §§ 552.301, .302.

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](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,

A handwritten signature in black ink, appearing to read 'D. Wheelus', with a long horizontal flourish extending to the right.

David L. Wheelus  
Assistant Attorney General  
Open Records Division

DLW/bhf

Ref: ID# 600283

Enc. Submitted documents

c: Requestor  
(w/o enclosures)