



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

December 10, 1990

Honorable J. Edgar Ruiz
Hidalgo County Judge
P. O. Box 1356
Edinburg, Texas 78540

Open Records Decision No. 577

Re: Confidentiality under Health
and Safety Code section 81.046 of
an investigative file of a county
health department on outbreak of
shigellosis (RQ-2094)

Dear Judge Ruiz:

The Health Department of the county of Hidalgo has received a request under the Open Records Act, V.T.C.S. art. 6252-17a, for information compiled in the investigation of shigellosis food poisoning at a restaurant. The request seeks all information related to the investigation of the restaurant, including written memoranda, notes, telephone logs of complaints, copies of any reports or records on inspections of the restaurant or testing of food samples, and the results of examinations, interrogations, or testing of the restaurant's employees. You ask whether the investigative file, including all the specific items requested, is confidential under section 81.046 of the Health and Safety Code and section 3(a)(1) of the Texas Open Records Act, article 6252-17a, V.T.C.S.

The Communicable Disease Prevention and Control Act is codified as chapter 81 of the Health and Safety Code. Health & Safety Code § 81.001. Health care providers are required to report suspected cases of communicable diseases to the local health authority. Id. § 81.042(a). A "health authority" is a physician appointed to that position under chapter 121 of the code. Id. at 81.003(2). In the case of a county that has established a local health department, the health authority for the county is the physician appointed as director of the department. Id. §§ 121.031, 121.033. If the director is not a physician, he appoints a physician as the health authority. Id. § 121.033.

Section 81.046 of the Health and Safety Code, the confidentiality provision for information about reportable diseases, provides as follows:

(a) Reports, records, and information furnished to a health authority or the department that relate to cases or suspected cases of diseases or health conditions are confidential and may be used only for the purposes of this chapter.

(b) Reports, records, and information relating to cases or suspected cases of diseases or health conditions are not public information under . . . [the Open Records Act], and may not be released or made public on subpoena or otherwise except as provided by Subsections (c) and (d).

Health & Safety Code § 81.046 (emphasis added).¹

The quoted provisions encompass any information relating to diseases or health conditions that are in possession of the health authority. Thus, the investigative file compiled by the Hidalgo County Health Department concerning the outbreak of shigellosis is made confidential by section 81.046, including the specific items mentioned by the requestor, unless one of the exceptions applies.

A prior opinion of this office, Open Records Decision No. 442 (1986), concluded that the predecessor of section 81.046 did not afford confidentiality to records of an investigation of a shigellosis outbreak undertaken by the Texas Department of Health. The Communicable Disease Prevention and Control Act was formerly codified as article 4419b-1, V.T.C.S., and the confidentiality provision was codified as section 3.06 of the statute. Acts 1983, 68th Leg., ch. 255, at 1116. When Open Records Decision No. 442 was issued in 1986, section 3.06 provided in part:

1. Subsection (c) of section 81.046 provides some limited exceptions from the confidentiality requirement, while subsection (d) allows for the release of information in accordance with chapter 34 of the Family Code in cases of a sexually transmitted disease involving a minor under 13 years of age.

Reports of diseases furnished to the health authority or the department are confidential.

Acts 1983, 68th Leg., ch. 255, at 1116. Open Records Decision No. 442 concluded that the quoted language applied only to reports submitted to the department and not to records of investigations performed by the department. See also Open Records Decision No. 407 (1984).

A 1987 amendment to former section 3.06 gave the confidentiality provision its present breadth. To the reports already confidential, the amendment added "records, and information relating to cases or suspected cases of diseases or health conditions." Acts 1987, 70th Leg., ch. 543, § 10, at 2180. Because the provision that Open Records Decision No. 442 relies on has been amended, that decision is not applicable to the construction of section 81.046. The health department may not provide the requestor with any information acquired in its investigation of the food poisoning incident, unless an exception to the section 81.046 confidentiality provision applies to particular documents.

Section 81.046(c) sets out the following exceptions:

(c) Medical or epidemiological information may be released:

(1) for statistical purposes if released in a manner that prevents the identification of any person;

(2) with the consent of each person identified in the information;

(3) to medical personnel, appropriate state agencies, or county and district courts to comply with the chapter and related rules relating to the control and treatment of communicable diseases and health conditions;

(4) to appropriate federal agencies, such as the Centers for Disease Control of the United States Public Health Service . . .

(5) to medical personnel to the extent necessary in a medical emergency to protect

the health or life of the person identified in the information.

Health & Safety Code § 81.046(c) (emphasis added).

Attached to the request letter is a notarized "Information and Document Release" signed by an individual and authorizing the Hidalgo County Health Department to release to her attorneys any records that they may request. It expressly authorizes the department to provide her attorneys with any information concerning injuries sustained by herself or any member of her family.

Section 81.046 does not permit the Hidalgo County Health Department to give the attorneys the full range of information identified in the release, but it does permit it to provide them with medical or epidemiological information concerning the person who signed the release and any member of her family for whom she has the right to give consent.

Subsection (c)(2) uses the permissive term "may." We need not decide whether the director of the county health department has discretion to withhold such information from its subject, because it must be read together with section 3B of the Open Records Act. Section 3B establishes that the department has a mandatory duty to release medical or epidemiological information concerning an individual to persons who have that individual's consent to the release. Section 3B provides in part:

(a) A person or the authorized representative of a person has, beyond the right of the general public, a special right of access to and to copies of any records held by a governmental body that contain information relating to the person that is protected from public disclosure by laws intended to protect that person's privacy interests.

V.T.C.S. art. 6252-17a, § 3B(a). See generally Open Records Decision No. 565 (1990).

We conclude that the conditions placed on the release of medical or epidemiological information are designed to protect individual privacy, since this information may be released if each person identified in the information gives consent or, for statistical purposes, if no one is identified. Thus, section 3B requires the county health department to release to the requestor any "medical or

epidemiological information" it has concerning the individual who signed the release and any family members for whom she is authorized to give consent. It may not release such information concerning any other persons without their consent; nor may it release other kinds of information prepared or acquired in connection with the investigation.

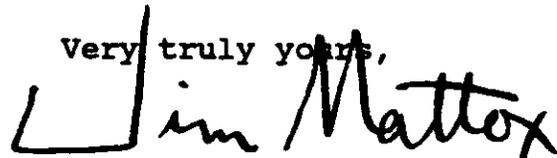
Open Records Decision No. 442 (1986) does not construe the language added in 1987 to former section 3.06 of article 4419b-1, recodified as section 81.046 of the Health and Safety Code; accordingly, it should be disregarded as a construction of that confidentiality provision.

S U M M A R Y

Section 81.046 of the Health and Safety Code is a broad confidentiality provision applicable to information relating to reportable diseases in the possession of a county health department, whether received as reports from health professionals or prepared in connection with the department's investigation of a disease or health condition. Section 81.046(c)(2), when read together with section 3B of article 6252-17a, V.T.C.S., the Open Records Act, requires the department to release to a requestor any "medical or epidemiological information" it has concerning a individual who has consented to the release.

Open Records Decision No. 442 (1986), which concluded that the predecessor to section 81.046 did not apply to reports of investigations performed by a health department, should be disregarded because it construed language that has since been amended.

Very truly yours,



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