



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 30, 1993

David R. Smith, M.D.
Commissioner of Health
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR93-717

Dear Dr. Smith:

The Department of Health (the "department") received a request for HIV Medication Program documents pursuant to the Texas Open Records Act, chapter 552, Government Code. Dr. Robert A. MacLean, M.D., Acting Commissioner of the department, referred this matter to us by letter of December 2, 1991. This request for an open records ruling was assigned ID# 14350.

The federally-funded HIV Medication Program helps cover the costs of medication that prolongs the life of a person with acquired immunodeficiency syndrome. The requested information includes a list of the program participants and the physicians and pharmacists who work with them. Certain program documents were submitted under subpoena to the U.S. Attorney's Office for a federal grand jury investigation. The department raised the following questions in claiming that this information was confidential:

Are HIV Medication Program documents which the department submitted under subpoena to the U.S. Attorney's Office for a Federal Grand Jury investigation confidential under the Open Records Act, [section 552.101, Government Code] as being confidential by law (Rule 6 of the Federal Rules of Criminal Procedure)?

Are the names of physicians and pharmacies which work with HIV medication program participants confidential under the Health and Safety Code, sections 81.101 and 81.103?

We are informed by Mr. Jim Allen, Director of the Division of Pharmacy of the department, that the federal court case has since gone to trial and resulted in a conviction, and that the department no longer claims that any documents are confidential under Rule 6 of the Federal Rules of Criminal Procedure. Accordingly, we need not address the first question. Any information that was withheld from the requestor solely because it had been subpoenaed for the federal grand jury investigation must be provided to the requestor.

Some of the requested information is confidential pursuant to section 81.103 of the Health and Safety Code. This section of the Communicable Disease Prevention and Control Act states in part:

A test result is confidential. A person that possesses or has knowledge of a test result may not release or disclose the test result or allow the test result to become known except as provided by this section.

Health & Safety Code § 81.103(a). A "test result" is defined broadly to mean:

any statement that indicates that an identifiable individual has or has not been tested for AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS, including a statement or assertion that the individual is positive, negative, at risk, or has or does not have a certain level of antigen or antibody.

Id. § 81.101(5). Test results as defined by the above provisions may not be disclosed pursuant to a request under the Open Records Act. *See* Open Records Decision No. 529 (1989). The names of physicians and pharmacies that work with HIV medication program participants are not confidential under sections 81.101 and 81.103 of the Health and Safety Code. In addition, you do not explain how revealing the names of the physicians and pharmacies would identify individual program participants and we fail to see how such identification would reasonably result from the release of this information. Accordingly, the names of physicians and pharmacies that work with program participants must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Susan L. Garrison
Assistant Attorney General
Open Government Section

SLG/RLP/rho

Ref.: ID# 14350

Enclosure: Open Records Decision No. 529 (1989)

cc: Mr. Jim Allen, Director
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