



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 25, 1994

Ms. Kari A. Hernandez
Assistant City Attorney
Office of the City Attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR94-395

Dear Ms. Hernandez:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 26334.

The City of El Paso (the "city") has received a request for information relating to a recent outbreak of botulism. Specifically, the requestor seeks all information in the city's possession relating to allegations of botulism poisoning at Tassos Greek Cuisine and Seafood Restaurant. You have submitted representative samples of the requested information to us for review.¹ You seek to withhold the requested information under section 552.101 of the Government Code.

Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You seek to withhold the requested information under section 5.08 of the Medical Practice Act, V.T.C.S. article 4495b. We note, however, that another statute, section 81.046 of the Health and Safety Code, makes the requested information confidential. Section 81.046 provides, in pertinent part:

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision No. 499, 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(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).

See also Open Records Decision No. 577 (1990) (addressing applicability of section 81.046 to information relating to reports of shigellosis made to county health authority).

We have examined the information submitted to us for review. It relates to reports made to the El Paso City-County Health and Environmental District concerning allegations of botulism poisoning, a reportable health condition. We understand that none of the exceptions to confidentiality set forth in subsections (c) and (d) of section 81.046 apply in this instance. Accordingly, we conclude that the city must withhold the requested information under section 552.101 of the Government Code.

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,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/GCK/rho

Enclosures: Submitted documents

Ref.: ID# 26334

cc: Mr. Bruce Yetter
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(w/o enclosures)