

January 26, 1999



OFFICE OF THE
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STATE OF TEXAS

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Mr. Monty Waters, Attorney
Office of General Counsel
Texas Department of Health
1100 West 49th Street
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Dear Mr. Waters:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 121386.

The Texas Department of Health (the "department") received a request for information relating to the department's investigation into complaints relating to the Ferguson-Burleson Gas Gathering Facility. You contend that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with sections 81.046 and 161.0213 of the Health and Safety Code and section 5.08 of article 4495b of Vernon's Texas Civil Statutes (the "MPA"). You have supplied the responsive information. We have considered the exceptions you claim and have reviewed the documents at issue.

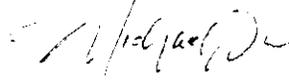
Section 552.101 of the Government Code excepts from public disclosure information considered confidential by law, including information made confidential by statute. As section 161.0213 of the Health and Safety Code is dispositive of this request for opinion, we will confine our discussion to that statute. It reads as follows:

Reports, records, and information furnished to the commissioner or the commissioner's designee or the Texas Natural Resource Conservation Commission that relate to an epidemiologic or toxicologic investigation of human illnesses or conditions and of environmental exposures that are harmful or believed to be harmful to the public health are not public information under Chapter 552, Government Code, and are subject to the same confidentiality requirements as described by Section 81.046.

Section 161.0213 is found in title 2 of the Health and Safety Code. Section 11 of that code contains the pertinent definitions of terms used in Title 2. Section 11.001(2) defines "Commissioner" to mean "the commissioner of public health." Section 11.001(3) defines "department" to mean the "Texas Department of Health." Section 11.02(e) designates the Commissioner as the executive head of the department. Therefore, the subject information was furnished to the Commissioner or the Commissioner's designee. You relate that the information consists of "reports, records, and information that relate to an epidemiologic or toxicologic investigation of human illnesses or conditions and of environmental exposures that are harmful or believed to be harmful to the public health." Our inspection of these documents supports this assertion. Therefore, the subject information is confidential, pursuant to section 161.0213 of the Health and Safety Code, and it must not be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/nc

Ref: ID# 121386

Enclosures: Submitted documents

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