



July 23, 1999

Mr. Robert L. Dillard, III
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR99-2069

Dear Mr. Dillard:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 126125.

The City of Duncanville (the “city”), which you represent, received a request for information regarding an alleged Hepatitis A case at a specific restaurant. You state that the city has made some of the information available to the requestor. You contend that the remaining information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 81.046 of the Health and Safety Code. We have considered the exception you claim and have reviewed a representative sample of the documents at issue.¹

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Chapter 81 of the Health and Safety Code, of which section 81.046 is a part, is commonly referred to as the Communicable Disease Prevention and Control Act. 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 Nos. 499 (1988), 497 (1988). 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 Public Information Act] and may not be released or made public on subpoena or otherwise except as provided by Subsections (c) and (d).

In Open Records Decision No. 577 (1990), this office concluded that any information acquired or created by the Texas Department of Health or a health authority during an investigation under chapter 81 is confidential and may not be released unless an exception set out in the statute applies. Only one of the submitted documents falls within the scope of section 81.046. We agree that section 81.046(b) governs the release of this document. We have marked this document accordingly (see green tab).

None of the other submitted documents are within the scope of section 81.046. In fact, several of these documents are deemed public by regulation. *See* 25 T.A.C. § 229.171(b) (completed inspection form for food service establishment is public and shall be made available to any person who requests it according to law). The city must, therefore, release, these documents to the requestor.

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.

Sincerely,


Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 126125

Encl. Submitted documents

cc: Mr. Jerry R. Hoodenpyle
Attorney at Law
1323 West Pioneer Parkway
Arlington, Texas 76013
(w/o enclosures)