



June 15, 2000

Ms. Karmen Binka
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2000-2334

Dear Ms. Binka:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 136733.

The City of San Antonio (the "city") received a request from the Child Protective Services Division of the Texas Department of Reproductive and Regulatory Services ("CPS") for medical information and blood test results related to a minor child and her family. The child is the subject of a CPS investigation. You claim that most of the requested information is excepted from disclosure under section 81.046 of the Health and Safety Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Accordingly, section 552.101 encompasses confidentiality provisions such as section 81.046 of the Health and Safety Code. Under section 81.042, various types of health professionals are required to make reports to the "local health authority" of instances of suspected cases of "reportable diseases" and "health conditions." Section 81.046 of the Health and Safety Code provides:

- (a) Reports, records, and information furnished to a health authority . . . 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

Health & Safety Code §§ 81.046(a), (b). In Open Records Decision No. 577 (1990), this office concluded that any information acquired or created during an investigation under chapter 81 is confidential and may not be released unless an exception set out in the statute applies.

It appears that the blood test results and medical information at issue were obtained by the city in a report from a physician in accordance with Health and Safety Code section 81.042. Assuming that all of the information you have submitted to this office as responsive to the open records request was gathered or created by the city pursuant to the provisions of chapter 81, we agree that section 81.046(b) governs the release of this information. As none of the provisions allowing for discretionary release appear to apply in this instance, the city must withhold the submitted documents under section 81.046 of the Health and Safety Code, as encompassed by section 552.101 of the Government Code.¹

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839.

¹We note that subsection (d) provides that, in a case of a sexually transmitted disease involving a minor under age 13, the child's name, age, address, and the name of the disease may be released pursuant to chapter 261 of the Family Code. We understand that the city has exercised its discretion to release this limited information to the requestor.

The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF/CHS/ljp

Ref: ID# 136733

Encl. Submitted documents

cc: Ms. Caroline Briones
Protective and Regulatory Services
P.O. Box 23990
San Antonio, Texas 78223-2796
(w/o enclosures)