



August 21, 2001

Mr. Charles Homer, III  
Assistant General Counsel  
Texas Department of Health  
1100 West 49<sup>th</sup> Street  
Austin, Texas 78756-3199

OR2001-3688

Dear Mr. Homer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 150927.

The Texas Department of Health (the "department") received a request for copies of all "materials, records, documents, photos or things in [the department's] possession pertaining to a 14 May 2001 death which occurred after the decedent had dined at [a specified restaurant] in Stafford, Texas on May 12, 2001." You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. You state that you have or will release all other responsive information. We have considered the exception you claim and have reviewed the submitted information.

We note at the outset that the department failed to comply with the procedural requirements of section 552.301 of the Government Code. Section 552.301 provides that a governmental body must ask the attorney general for a decision as to whether requested information must be disclosed not later than the tenth business day after the date of receiving the written request. You state that the department received the requestor's written request for information on May 24, 2001. However, the department did not request a decision from this office until June 18, 2001, more than ten business days after the department received the written request for information. Thus, the department failed to meet its ten-day deadline for requesting a decision from this office.

When a governmental body fails to request a decision within ten business days of receiving a request for information, the information at issue is presumed public. *See Gov't Code* § 552.302; *see also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982).

The governmental body must demonstrate a compelling reason to withhold the information in order to overcome this presumption. *See id.* Normally, a compelling reason is shown when the governmental body demonstrates that the information is confidential by law or that third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Since you claim that the submitted information is confidential by law, we will address your claims.

You claim that the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 81.046 of the Health and Safety Code.<sup>1</sup> Section 81.046 provides, in pertinent part:

- (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 Chapter 552, Government Code, and may not be released or made public on subpoena or otherwise except as provided by Subsection (c) and (d).

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. You state that all of the submitted documents were either furnished to the department or were created or gathered by the department and relate to cases or suspected cases of diseases or health conditions. After reviewing the submitted information, we agree that the documents at issue fall within the scope of section 81.046. Further, none of the release provisions of section 81.046 appears to apply. Accordingly, the department must withhold the submitted information from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 81.046 of the Health and Safety Code. Because we rule that the submitted information is confidential under section 81.046 of the Health and Safety Code, we need not address your other claims.

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.

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<sup>1</sup> Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses information protected by other statutes.

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).

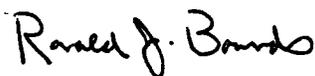
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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. 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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/sdk

Ref: ID# 150927

Enc. Submitted documents

c: Mr. Gary J. Gambel  
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(w/o enclosures)