OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

July 23, 2003

Ms. Myrna S. Reingold
Galveston County Legal Department
4127 Shearn Moody Plaza
123 Rosenberg
Galveston, Texas 77550-1454

OR2003-5077

Dear Ms. Reingold:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 184741.

Galveston County (the "county") received a request for information regarding an investigation of an alleged Thanksgiving Day food poisoning incident at the county jail. You state that some responsive information has been released. You claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You state that the requested information is the subject of a previous ruling from this office. In Open Records Letter No. 2003-2417 (2003), we concluded that the county was required to withhold the submitted information under section 81.046 of the Health and Safety Code. You inform us, however, that since that ruling was issued, some of the individuals identified in the requested documents have provided a written authorization for release of information that pertains to them pursuant to section 81.046(c)(2) of the Health and Safety Code. *See* Open Records Decision No. 577 (1990) (concluding that section 81.046 permits health department to provide requestor with medical or epidemiological information concerning person who signed release or any member of her family for whom she had right to give consent). Thus, for those individuals who have provided such an authorization for release of information, the facts and circumstances on which the prior attorney general ruling was based have changed since the issuance of the ruling. Therefore, for information pertaining to those individuals, you may not rely on Open Records Letter No. 2003-2417 as a previous

determination.[1] You state that the county has released the responsive information that specifically pertains exclusively to the individuals who provided written authorization pursuant to section 81.046(c)(2) of the Health and Safety Code. *See* Health & Safety Code § 81.046(c), Open Records Decision No. 577. Thus, this ruling does not address that information.

For the remaining individuals who have not provided a written authorization for release of information pursuant to section 81.046(c)(2) of the Health and Safety Code, we understand you to represent that the circumstances existing at the time of the issuance of the prior ruling have not changed and that, consequently, the four criteria for a "previous determination" established by this office in Open Records Decision No. 673 (2001) have been met in this situation. Therefore, in reliance on that representation, we conclude that the county may withhold the remaining submitted information in accordance with Open Records Letter No. 2003-2417. *See* Gov't Code § 552.301(f); Open Records Decision No. 673 (2001).[2]

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

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[1]The four criteria for this type of "previous determination" are 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the attorney general's prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. *See* Open Records Decision No. 673 (2001).

[2]As our ruling is dispositive, we do not address your arguments.

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 Dep't of Pub. 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/lmt

Ref: ID# 184741

Enc. Submitted documents

c: Mr. Clement Aldridge, Jr.
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(w/o enclosures)