



ATTORNEY GENERAL OF TEXAS
· GREG ABBOTT

November 7, 2003

Mr. Brad Norton
Assistant City Attorney
City of Austin
P.O. Box 1546
Austin, Texas 78767-1546

OR2003-8043

Dear Mr. Norton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 191066.

The City of Austin (the "city") received a request for the name of the individual who died of West Nile Virus on a specified date. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information made confidential by other statutes. You assert that the submitted documents are confidential under section 81.046 of the Health and Safety Code. Chapter 81 of the Health and Safety Code codifies the Communicable Disease Prevention and Control Act. *See* Health & Safety Code § 81.001. Section 81.046 provides in relevant 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 Subsections (c) and (d).

Id. § 81.046(a)-(b).¹ In Open Records Decision No. 577 (1990), we concluded that any information acquired or created during an investigation under chapter 81 of the Health and Safety Code is confidential and may not be released unless an exception set out in section 81.046 applies. You state that the Austin-Travis County Health and Human Services Department is headed by a health authority appointed under chapter 121 of the Health and Safety Code, and that the submitted documents constitute reports, records, and information furnished to a health authority pursuant to the communicable disease reporting provisions of chapter 81. Further, you explain that “West Nile Virus, a communicable disease which has only recently appeared in central Texas and is of public health concern, is a reportable disease under Chapter 81 of the Health and Safety Code.” *See* 25 T.A.C. § 97.3. We note that none of the exceptions to confidentiality under section 81.046 are applicable in this instance. Therefore, based on your representations and our review of the submitted information, we agree that the submitted 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 as information made confidential by law.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

¹A “health authority” is a physician appointed under the provisions of chapter 121 of the Health and Safety Code to administer state and local laws relating to public health within the appointing body’s jurisdiction. *See* Health & Safety Code § 121.021. In the instance of a city that has established a local health department, the health authority for the city is the director of the local health department, if the director is a physician, or a physician appointed by the director if the latter is not a physician. *See id.* §§ 121.031, .033.

²As we are able to make this determination, we need not address your remaining argument.

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 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,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/lmt

Ref: ID# 191066

Enc: Submitted documents

c: Mr. Tony Plohetski
Austin American-Statesman
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(w/o enclosures)