



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 10, 2004

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

OR2004-1843

Dear Mr. Waters:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 197455.

The Texas Department of Health (the "department") received a request for information relating to the Hidalgo County and Mission, Texas areas, including reports, documents, and results regarding (1) December, 1998 and May, 2001 investigations of occurrences of cancer in the Hidalgo County and Mission areas and (2) a study of environmental contamination at the site of an abandoned pesticide formulation plant in Mission. You inform us that some of the requested information either has been or will be released. You claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.137 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

Initially, we address the department's obligations under section 552.301 of the Government Code. This section prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires the governmental body to ask for the attorney general's decision and state the exceptions to disclosure that it claims not later than the tenth business day after the date of its receipt of the written request for information. *See* Govt. Code § 552.301(b). Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of its receipt of the request, (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed

statement of the date on which the governmental body received the request, or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples of the information if it is voluminous. *See id.* § 552.301(e)(1)(A)-(D). If the governmental body does not request an attorney general decision as prescribed by section 552.301, the information requested in writing is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold the information. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ).

You concede that the department did not request this decision within the ten-business-day period prescribed by section 552.301(b). Likewise, the department did not timely comply with section 552.301(e) in requesting this decision. Therefore, the submitted information is presumed to be public under section 552.302, and the information must be released unless there is a compelling reason to withhold it from the public. The presumption that information is public under section 552.302 can generally be overcome when the information is confidential by law or third-party interests are at stake. *See Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982)*. In this instance, the department seeks to withhold the submitted information under sections 552.101 and 552.137. As the department's claims under these sections can provide compelling reasons for non-disclosure under section 552.302, we will consider your arguments.

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that other statutes make confidential. Section 81.046 of the Health & Safety Code provides in part:

- (a) Reports, records, and information furnished to a health authority or the [Texas Department of Health] that relate to cases or suspected cases of diseases or health conditions are confidential and may be used only for purposes of [chapter 81 of the Health and Safety Code].
- (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).

Health & Safety Code § 81.046(a)-(b). This office has 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. *See Open Records Decision No. 577 (1990)*. You assert that section 81.046 is applicable to the submitted information. You indicate that this information was furnished to or created or gathered by the department and relates to cases or suspected cases of diseases or health conditions. You also state that the submitted information does not fall within the exceptions

for release set forth in section 81.046. Based on your representations and our review of the information that you claim is encompassed by this section, we conclude that you must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 81.046 of the Health and Safety Code. As we are able to make this determination, we need not address your other arguments against disclosure.

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. Govt. 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).

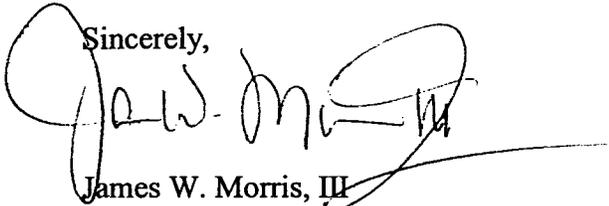
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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

A handwritten signature in black ink, appearing to read "J.W. Morris, III", with a long horizontal flourish extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 197455

Enc: Submitted documents

c: Ms. Michelle W. Wan  
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(w/o enclosures)