



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 19, 2007

Mr. Monty Waters
Assistant General Counsel
Texas Department of State Health Services
1100 West 49th Street
Austin, Texas 78756

OR2007-09169

Dear Mr. Waters:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 284256.

The Texas Department of State Health Services (the "department") received a request for the data that was reviewed to arrive at the findings and conclusions for the Midlothian Consultation Report. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you

¹We note that this request for information contains questions. A governmental body is not required to answer factual questions, conduct legal research, or create new information in responding to a request for information under the Act. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). Likewise, the Act does not require a governmental body to take affirmative steps to create or obtain information that is not *in its possession, as long as no other individual or entity holds the information on behalf of the governmental body that received the request.* *See* Gov't Code § 552.002(a); Open Records Decision Nos. 534 at 2-3 (1989), 518 at 3 (1989). However, a governmental body must make a good-faith effort to relate a request to responsive information that is within its possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). We assume that the department has done so.

claim and have reviewed the information you submitted.² We also have considered the comments that we received from the requestor.³

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with section 161.0213 of the Health and Safety Code, which provides as follows:

Reports, records, and information furnished to the commissioner [of public health] or the commissioner’s designee or the Texas [Commission on Environmental Quality] that relate to an epidemiologic or toxicologic investigation of human illnesses or conditions and of environmental exposures that are harmful or believed to be harmful to the public health are not public information under Chapter 552, Government Code, and are subject to the same confidentiality requirements as described by Section 81.046 [of the Health and Safety Code].

Health & Safety Code § 161.0213. You state that the submitted information consists of 22 tables of data provided to the department, as well as additional information created by the department through more than 100 queries using the data in the tables. You “certify that all of the records and/or information furnished to [the department] relate to an epidemiologic or toxicologic investigation of human illnesses and conditions, or environmental exposures that are harmful or believed to be harmful[.]” *See id.* § 161.0211 (providing that department shall conduct epidemiologic or toxicologic investigations of illnesses or conditions and of environmental exposures believed to be harmful to public health). Based on your representations, we conclude that the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 161.0213 of the Health and Safety Code.

You also ask this office to issue a previous determination that would permit the department to withhold information from the public on the basis of section 161.0213 without the necessity of again requesting an attorney general decision under the Act. *See* Gov’t Code § 552.301(a); Open Records Decision No. 673 (2001) (previous determinations). Having considered your arguments, we have determined that your request should be granted.

²This letter ruling assumes that the submitted representative samples of information are truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the department to withhold any information that is substantially different from the submitted information. *See* Gov’t Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

³*See* Gov’t Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

Therefore, this ruling shall serve as a previous determination under section 552.301(a) of the Government Code for information held by the department that is made confidential under section 161.0213 of the Health and Safety Code. This previous determination applies only to reports, records, and information furnished to the commissioner of public health or the commissioner's designee that relates to an epidemiologic or toxicologic investigation of human illnesses or conditions and of environmental exposures that are harmful or believed to be harmful to the public health. This previous determination is not applicable to information to which a requestor may have a right of access under another provision of law. *See, e.g.*, Occ. Code § 159.002 *et seq.* (medical records); *id.* § 201.402 *et seq.* (chiropractic records); *id.* § 258.102 *et seq.* (dental records); Health & Safety Code § 611.002 *et seq.* (mental health records). So long as the elements of law, fact, and circumstances do not change so as to no longer support the findings set forth above, the department need not ask for a decision from this office again with respect to this type of information. *See* ORD 673 at 7-8 (listing elements of second type of previous determination under Gov't Code § 552.301(a)).

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).

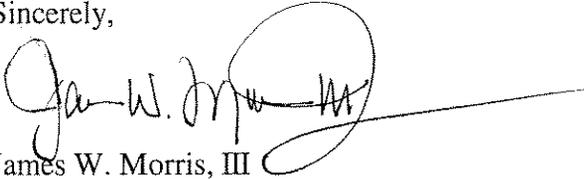
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is fluid and cursive, with a long horizontal line extending to the right.

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

JWM/jb

Ref: ID# 284256

Enc: Submitted documents

c: Mr. Sal Mier
1551 Bois D'Arc Lane
Midlothian, Texas 76065
(w/o enclosures)