



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 22, 2008

Ms. Cathie Childs
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-1088

OR2008-12989

Dear Ms. Childs:

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# 322780.

The City of Austin Health and Human Services Department (the "department") received a request for the food inspection and violations form for a named business. 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 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 81.046 of the Health and Safety Code. This section is part of the Communicable Disease Prevention and Control Act, chapter 81 of the Health and Safety Code. *See* Health & Safety Code § 81.001. Section 81.046 provides in part:

- (a) Reports, records, and information furnished to a health authority or the [Texas Department of State Health Services ("TDSHS")] 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).

Id. § 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 of the Health and Safety Code is confidential and may not be released unless an exception set out in the statute applies. We understand that the department is the city's health authority. You state that the submitted information "consists of records relating to an investigation by [the department] of a possible case of food-borne illness." You further state that "[t]he submitted information was gathered or created by the department pursuant to the provisions of Chapter 81. Based on your representations, we conclude that the submitted information is confidential under section 81.046. We note that none of the release provisions of section 81.046 appears to be applicable in this instance. We therefore conclude that the department 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.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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).

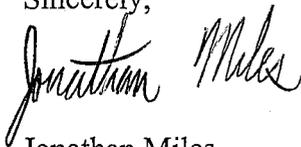
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 challenge 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/jh

Ref: ID# 322780

Enc. Submitted documents

c: Mr. Pefino Amaro Sr.
c/o Ms. Cathie Childs
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P.O. Box 1088
Austin, Texas 78767-1088
(w/o enclosures)