



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 23, 2009

Mr. David M. Swope  
Assistant County Attorney  
Harris County Attorney's Office  
1019 Congress, 15th Floor  
Houston, Texas 77002

OR2009-05418

Dear Mr. Swope:

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# 340734 (Harris County C.A. File #09GEN0260).

Harris County Public Health and Environmental Services ("HCPHES") received a request for information regarding a specified case of salmonella poisoning. You claim that the submitted 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" and encompasses information protected by statute. Gov't Code § 552.101. Chapter 81 of the Health and Safety Code codifies the Communicable Disease Prevention and Control Act. Section 81.046 of the Health and Safety Code provides in pertinent 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 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).

Health & Safety Code § 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 is confidential and may not be released unless it is subject to an exception set out in the statute. You indicate, and the documents reflect, that the submitted information was furnished to and used by HCPHES pursuant to the provisions of chapter 81. Pursuant to subsection 81.046(c), the department may release medical or epidemiological information that is confidential under section 81.046 on the following grounds:

- (1) for statistical purposes if released in a manner that prevents the identification of any person;
- (2) with the consent of each person identified in the information;
- (3) to medical personnel, appropriate state agencies, or county and district courts to comply with this chapter and related rules relating to the control and treatment of communicable diseases and health conditions;
- (4) to appropriate federal agencies, such as the Centers for Disease Control of the United States Public Health Service, but the information must be limited to the name, address, sex, race, and occupation of the patient, the date of disease onset, the probable source of infection, and other requested information relating to the case or suspected case of a communicable disease or health condition; or
- (5) to medical personnel to the extent necessary in a medical emergency to protect the health or life of the person identified in the information.

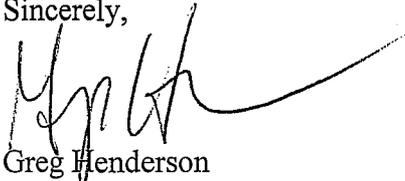
Health & Safety Code § 81.046(c). We note, and you acknowledge, that the requestor has provided a written authorization from the individual identified in the requested documents. The requestor claims the consent form complies with the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 42 U.S.C. §§ 1320d-1320d-8. You argue that the consent is not valid as section 81.046 of the Health and Safety Code, and not HIPAA, is controlling in this instance. Based on your representations and our review, we agree that section 81.046 of the Health and Safety Code governs the release of this information. As this office is unable to make a determination on the validity of the consent provided, we must rule conditionally. Accordingly, if HCPHES receives proper consent from the requestor under section 81.046(c)(2), then the medical or epidemiological information that pertains to the requestor's client must be released. *See* Health & Safety Code § 81.046(c)(2) (providing that medical or epidemiological information may be released with the consent of each person identified in the information); *see also* ORD 577 (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). Otherwise, HCPHES must withhold the submitted information in its entirety pursuant to 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 information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Greg Henderson  
Assistant Attorney General  
Open Records Division

GH/jb

Ref: ID#340734

Enc. Submitted documents

c: Requestor  
(w/o enclosures)