



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 6, 2009

Ms. Linda S. Wiegman
Deputy General Counsel
Texas Department of State Health Services
P.O. Box 149347
Austin, Texas 78714-9347

OR2009-14053

Dear Ms. Wiegman:

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# 357388.

The Texas Department of State Health Services (the "department") received a request for information pertaining to a salmonella outbreak in Caldwell County in June 2009. You claim the responsive information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹ We have also considered comments received from the requestor.² See Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

²The requestor argues his request is not encompassed by the previous determination issued to the department in Open Records Letter No. 2005-02352 (2005). In comments to this office, the department acknowledges Open Records Letter No. 2009-10352 (2009). In Open Records Letter No. 2009-10352, this office ruled that Open Records Letter No. 2005-02352 may no longer be relied on as a previous determination as there was a change in the law upon which Open Records Letter No. 2005-02352 was based. Accordingly, the department argues 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.

Initially, the requestor contends, and you acknowledge, the department did not comply with its ten-business-day deadline under section 552.301(b) of the Government Code in requesting this decision. *See id.* § 552.301(b). The submitted information is therefore presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). Because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider the applicability of this section to 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.” Gov’t Code § 552.101. Section 552.101 encompasses information made confidential by other statutes, such as section 81.046 of the Health and Safety Code, which provides in part:

(a) Reports, records, and information received from any source, including from a federal agency or from another state, furnished to a public health district, a health authority, a local health department, 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 [the Act], and may not be released or made public on subpoena or otherwise except as provided by Subsections (c), (d), and (f).

Act effective Sept. 1, 1989, 71st Leg., R.S., ch. 678, § 1, sec. 81.046, 1989 Tex. Gen. Laws 2230, 2312, *amended by* Act of May 31, 2009, 81st Leg., R.S., ch. 788, § 1, 2009 Tex. Sess. Law Serv. 1987, 1987–88 (Vernon) (to be codified as an amendment to Health & Safety Code § 81.046(a)). In Open Records Decision No. 577 (1990), this office concluded any information acquired or created during an investigation under the Communicable Disease Prevention and Control Act, chapter 81 of the Health and Safety Code, is confidential under section 81.046 and may not be released unless an exception set out in the statute applies. *See* Health & Safety Code § 81.046 (b)-(d), (f). You state the submitted information was provided to or created by the department in relation to cases or suspected cases of diseases or health conditions. Thus, we agree that section 81.046 governs the release of this information. You state none of the release provisions of section 81.046 are applicable in this instance. Accordingly, based upon your representations and our review of the submitted information, we agree 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 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, 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, toll free, at (888) 672-6787.

Sincerely,



Karen E. Stack
Assistant Attorney General
Open Records Division

KES/jb

Ref: ID# 357388

Enc. Submitted documents

c: Requestor
(w/o enclosures)