



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 2, 2010

Mr. Walter Ehresman  
Mr. Monty Walters  
Assistant General Counsel  
Texas Department of State Health Services  
P.O. Box 149347  
Austin, Texas 78714-9347

OR2010-11566

Dear Mr. Ehresman and Mr. Walters:

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# 388788.

The Texas Department of State Health Services's Laboratory Services Section and Infectious Disease Control Unit (collectively the "department") each received a request for all documents, line lists, notes, memoranda, e-mails/faxes, interviews, patient questionnaires, food histories, case-control studies, case control data, case control questionnaires, or other documents generated or received regarding a specified *E.coli* outbreak. 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." Gov't Code § 552.101. You raise section 552.101 in conjunction with section 81.046 of the Health and Safety Code. Section 81.046 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 Chapter 552, Government Code, and may not be released or made public on subpoena or otherwise except as provided by Subsections (c), (d), and (f).

Health & Safety Code § 81.046(a)-(d), (f). 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.

You state the submitted information was either furnished to or created or gathered by the department. Further, you state that the submitted information is related to an *E. coli* outbreak and that *E. coli* is a communicable disease under section 81.003 of the Health and Safety Code. Further, you assert that none of the exceptions in section 81.046 apply in this instance. Based on your representations and our review of the information at issue, we conclude that the submitted information is confidential under section 81.046 of the Health and Safety Code. Therefore, the department must withhold the submitted information under section 552.101 in conjunction with section 81.046 of the Health and Safety Code.

You also ask this office to issue a previous determination that would permit the department to withhold information under section 81.046 of the Health and Safety Code without the necessity of requesting a decision by this office. Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (previous determinations). We decline to issue such a decision at this time. 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, toll free at (888) 672-6787.

Sincerely,



Kate Hartfield  
Assistant Attorney General  
Open Records Division

KH/em

Ref: ID# 388788

Enc. Submitted documents

c: Requestor  
(w/o enclosures)