



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 12, 2010

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

OR2010-15543

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# 396653.

The Texas Department of State Health Services (the "department") received a request for the department's entire investigation file concerning cases of Legionella. You state you will release some of the requested information to the requestor. You claim 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 representative samples of information.¹

Initially, we note a portion of the submitted information, which we have marked, is not responsive to the request for information because it does not pertain to a Legionella case. Accordingly, the department need not release non-responsive information in response to this request, and this ruling will not address that information.

¹We assume the "representative samples" of records submitted to this office are 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.

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. 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 [the Act], 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), (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. *See id.* § 81.046(b)-(d), (f); ORD 577. You state the responsive information was either furnished to or created or gathered by the department and is related to cases or suspected cases of diseases or health conditions. Thus, we agree that section 81.046(b) governs the release of this information. You do not inform us that any of the release provisions of section 81.046 are applicable in this instance. Accordingly, based upon your representations and our review of the responsive information, we agree the department must withhold the responsive information under section 552.101 of the Government Code in conjunction with section 81.046 of the Health and Safety Code.

You 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. *See* 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, 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,

A handwritten signature in cursive script, appearing to read "C. Alvarado".

Christina Alvarado
Assistant Attorney General
Open Records Division

CA/tp

Ref: ID# 396653

Enc. Submitted documents

c: Requestor
(w/o enclosures)