



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 21, 2010

Ms. Cary Grace
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767

OR2010-16005

Dear Ms. Grace:

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# 397493.

The City of Austin (the "city") received a request for the following five categories of information: (1) the requestor's client's laboratory testing results for salmonella; (2) the requestor's client's reportable disease case form; (3) the requestor's client's "Case Series Questionnaire(s)"; (4) the line list of salmonella isolates in Travis County similar to the requestor's client's; and (5) investigation reports related to the salmonella outbreak involving the requestor's client and the cause of that outbreak. You claim the submitted line list, Foodborne Illness Intake Report, and Foodborne Illness Inspection Report are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that an interested third party may submit comments stating why information should or should not be released).

Initially, we note you did not submit information responsive to the first three categories of the request. To the extent any information responsive to these portions of the request existed on the date the city received the request, we assume the city has released it. If the city has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a) .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we note the requestor excludes from the request the names of individuals other than his client. Thus, this information is not responsive to the instant request. Information that is not responsive to this request need not be released. Moreover, we do not address such information in this ruling.

We must address the city's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request: (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). You state the city received the request for information on July 30, 2010. However, you did not fax this office written comments stating the reasons why the stated exception applies until September 8, 2010. Consequently, we find the city failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *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, 381-82 (Tex. App.—Austin 1990, no writ); 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). Section 552.101 of the Government Code can provide a compelling reason to overcome this presumption; therefore, we will consider whether this exception requires the city to withhold the submitted records.

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. 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 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 [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 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 is confidential and may not be released unless it is subject to an exception set out in the statute. You represent the submitted line list, Foodborne Illness Intake Report, and Foodborne Illness Inspection Report were each acquired or created during investigations conducted pursuant to chapter 81. We note the exceptions to confidentiality in sections 81.046(d) and 81.046(f) are not applicable in this instance. Section 81.046(c) also contains exceptions to confidentiality under section 81.046. Section 81.046(c) provides:

(c) Medical or epidemiological information may be released:

(1) for statistical purposes if released in a manner that prevents the identification of any person; [or]

(2) with the consent of each person identified in the information[.]

Health & Safety Code § 81.046(c). The requestor explains the responsive portions of the line list contain statistical data used by epidemiologists in their investigation of the potential relatedness of salmonella isolates. The requestor claims that, because his request does not include “personal medical information” other than that of his client, the city should release the submitted line list as statistical data pursuant to subsection 81.046(c)(1). However, the requestor does not provide any arguments explaining how release of this list to an attorney representing his client is “for statistical purposes.” *See id.* § 81.046(c)(1). Thus, we conclude the requestor has not shown how the exception to confidentiality in section 81.046(c)(1) is applicable in this instance.

The requestor also argues that release is proper under section 81.046(c)(2). The requestor states he has provided the city a written authorization from his client. The requestor claims this consent complies with the federal Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), found in 42 U.S.C. §§ 1320d-1320d-8. However, we note section 81.046(c) of the Health and Safety Code, not HIPAA, governs the release of this information. Therefore, if the city does not receive consent for release of the requestor’s client’s information, the city 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. If the city receives consent from the requestor under section 81.046(c)(2), then the requestor has a right of access under that section and the medical or epidemiological information pertaining to the requestor’s client must be released pursuant to section 81.046(c)(2). *See* Health & Safety Code § 81.046(c)(2).

The requestor additionally seeks disclosure of the information pertaining to individuals other than the requestor's client. The requestor claims these individuals' information may be released because they are not identified in the line list. However, by its own terms section 81.046 only permits the release of an individual's information upon receipt of proper consent. Therefore, because these individuals have not provided consent, their information is confidential under section 81.046 of the Health and Safety Code and must be withheld under section 552.101 of the Government 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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/tp

Ref: ID# 397493

Enc. Submitted documents

c: Requestor
(w/o enclosures)