



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 6, 2010

Mr. Joe Torres, III
Attorney for the City of Alice
216 North Boulevard, Suite 2
Alice, Texas 78332

OR2010-18211

Dear Mr. Torres:

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# 402129.

The City of Alice (the "city"), which you represent, received a request for information pertaining to health inspections conducted at three specified businesses. You claim the requested information is not subject to the Act. We have considered your argument and reviewed the submitted information.

You assert the submitted health inspection records are not public information subject to disclosure under the Act. Section 552.021 of the Government Code provides for public access to "public information," *see* Gov't Code § 552.021, which is defined by section 552.002 of the Government Code as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." *Id.* § 552.002(a). Thus, information that is collected, assembled, or maintained by a third party may be subject to disclosure under the Act if a governmental body owns or has a right of access to the information. *See* Open Records Decision No. 462 (1987); *cf.* Open Records Decision No. 499 (1988).

In this instance, the submitted records were prepared by the city and the Texas Department of State Health Services ("DSHS") as part of investigations and inspections conducted by the

city and DSHS. The city has submitted a copy of the information at issue to this office for review. Upon review, we find the submitted records constitute "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business" by or for the city. *See* Gov't Code § 552.002(a). We conclude, therefore, that the submitted information is public information subject to the Act and may only be withheld if it is excepted from disclosure under the Act.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ 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 [DSHS] 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. Upon review, we find the submitted information was either furnished to or created or gathered by the city's health department or DSHS and is related to cases or suspected cases of diseases or health conditions. Thus, we find section 81.046(b) governs the release of this information. It does not appear that any of the release provisions of section 81.046 are applicable in this instance. Accordingly, we determine the city 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.

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/eeg

Ref: ID# 402129

Enc. Submitted documents

cc: Requestor
(w/o enclosures)