



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 15, 2010

Ms. Jennifer Rutherford McClure  
Assistant District Attorney  
County of Denton  
P.O. Box 2850  
Denton, Texas 76202

OR2010-18845

Dear Ms. McClure:

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# 403134.

The Denton County Health Department (the "department") received a request for reportable disease case reports, completed case interview forms, results of enteric and molecular laboratory test results, and written communications within any division at the department or between the department and any local, state, or federal agency regarding a specified person. 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 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" and encompasses information protected by statute. 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 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), (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 indicate, and the documents reflect, the submitted information was furnished to and used by the department pursuant to the provisions of chapter 81. Pursuant to subsection 81.046(c), the department may release medical or epidemiological information that is confidential under section 81.046 on the following grounds:

- (1) for statistical purposes if released in a manner that prevents the identification of any person;
- (2) with the consent of each person identified in the information;
- (3) to medical personnel treating the individual, appropriate state agencies in this state or another state, a health authority or local health department in this state or another state, or federal, county, or district courts to comply with this chapter and related rules relating to the control and treatment of communicable diseases and health conditions or under another state or federal law that expressly authorizes the disclosure of this information;
- (4) to appropriate federal agencies, such as the Centers for Disease Control and Prevention of the United States Public Health Service, but the information must be limited to the name, address, sex, race, and occupation of the patient, the date of disease onset, the probable source of infection, and other requested information relating to the case or suspected case of a communicable disease or health condition; or
- (5) to medical personnel to the extent necessary in a medical emergency to protect the health or life of the person identified in the information.

Health & Safety Code § 81.046(c). You ask whether the department is required to release the requested information if proper consent is given or whether such release is optional. In Open Records Decision No. 577, this office concluded section 81.046(c)(2) of the Health and Safety Code, when read together with the statutory predecessor to section 552.023 of the Government Code, requires a county health department to release to a requestor any medical

or epidemiological information it has concerning an individual who has consented to the release. Open Records Decision No. 577 at 3 (1990). The department is, therefore, required to release the requested information to the requestor if the individual to whom the records pertain consented to their release. We note, and you acknowledge, that the requestor has provided a written authorization from the individual identified in the requested documents. You argue the consent is not valid because it was not notarized. As this office is unable to make a determination on the validity of the consent provided, we must rule conditionally. Accordingly, if the department receives proper consent from the requestor under section 81.046(c)(2), then the medical or epidemiological information that pertains to the requestor's client must be released, but the rest is confidential under section subsection 81.046(a). Otherwise, the department 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.

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,



Sean Nottingham  
Assistant Attorney General  
Open Records Division

SN/vb

Ref: ID# 403134

Enc. Submitted documents

c: Requestor  
(w/o enclosures)