



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 25, 2011

Ms. Lisa M. Nieman  
Assistant General Counsel  
Texas Department of State Health Services  
P.O. Box 149347  
Austin, Texas 78714-9347

OR2011-01253

Dear Ms. Nieman:

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# 407326 (DSHS File 18219/2011 and 18260/2011).

The Texas Department of State Health Services (the "department") received two requests for information pertaining to the department's investigation of a 2010 outbreak of *Listeria monocytogens* and Sangar Fresh Cut Produce ("Sangar"). You state you will release some of the requested information to the requestors. You claim the remaining information is excepted from disclosure under sections 552.101 and 552.111 of the Government Code. You also state release of this information may implicate the proprietary interests of Sangar. Accordingly, pursuant to section 552.305 of the Government Code, you state you have notified Sangar of the requests and of its right to submit arguments to this office as to why its information should not be released. *See Gov't Code § 552.305(d); see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Act in certain circumstances). We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

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<sup>1</sup>We assume that the representative sample of records submitted to this office is 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.

We note this office recently issued Open Records Letter No. 2010-18849 (2010), a previous determination authorizing the department to withhold information furnished to or created or gathered by the department that is related to cases or suspected cases of diseases or health conditions under section 552.101 of the Government Code in conjunction with section 81.046 of the Health and Safety Code, unless the release provisions of section 81.046 are applicable or the requestor has a right of access under any other provision of law. *See* Health & Safety Code § 81.046(a)-(d), (f). You state the information at issue was either furnished to or created or gathered by the department and is related to cases or suspected cases of diseases or health conditions. You represent that none of the release provisions of section 81.046 are applicable in this instance. Therefore, pursuant to Open Records Letter No. 2010-18849, the department 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.<sup>2</sup> *See* Open Records Decision No. 673 (2001) (governmental body may rely on previous determination when elements of law, facts, and circumstances have not changed, decision concludes specific, clearly delineated category of information is excepted, and governmental body is explicitly informed it need not seek a decision from this office to withhold information in response to future requests).

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,



Paige Lay  
Assistant Attorney General  
Open Records Division

PL/vb

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<sup>2</sup>As our ruling is dispositive, we need not address your arguments against disclosure of this information.

Ref: ID# 407326

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)

Jason E. Galvan  
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San Antonio, Texas 78215  
(w/o enclosures)