



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 11, 2011

Ms. Cary Grace
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-2268

OR2011-02127

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# 408980.

The Austin/Travis County Health and Human Services Department (the "department") received a request for (1) information related to a specified food-borne illness investigation and (2) the results of any other similar investigations or inspections of a named business during the past year. 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." Gov't Code § 552.101. Section 552.101 encompasses section 81.046 of the Health and Safety Code, which provides:

- (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 of State Health Services] 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 state the submitted information consists of records relating to an investigation by the department of a possible case of food-borne illness. You further state the information was gathered or created by the department pursuant to the provisions of chapter 81. Accordingly, we find the confidentiality provisions of section 81.046 generally applicable to the submitted information. However, 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). 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.¹ Open Records Decision No. 577 at 3 (1990). Therefore the department is required to release information that is otherwise confidential under section 81.046 if the individual to whom the records pertain consents to their release.

We note some of the submitted information relates to the requestor in this case. Accordingly, the department must release any medical or epidemiological information that relates to the requestor under section 81.046(c). The department must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 81.046 of the Health and Safety Code.²

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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/dls

¹See Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves).

²We note the requestor in this case has a special right of access to some of the information being released. Therefore, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.

Ref: ID# 408980

Enc. Submitted documents

c: Requestor
(w/o enclosures)