



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 18, 2011

Ms. Melanie Barton
Assistant District Attorney
Dallas County
411 Elm Street, 5th Floor
Dallas, Texas 75202

OR2011-03755

Dear Ms. Barton:

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# 411662.

The Dallas County Health and Human Services Department (the "department") received a request for information pertaining to a specified incident at a specified restaurant. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.²

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 information made confidential by other statutes. 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 relevant part:

¹We note the department did not raise section 552.101 of the Government Code as an exception to disclosure within ten business days of the date the department received the request. *See* Gov't Code §§ 552.301(b), 302. However, because section 552.101 is a mandatory exception that can provide a compelling reason to withhold information from disclosure, we will consider your claim under section 552.101, notwithstanding the department's violation of section 552.301(b) in raising that exception. *See id.* § 552.302.

²We 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.

(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 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 [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. You state the submitted information was either acquired or created by the department, and is related to cases or suspected cases of diseases or health conditions. Thus, we agree that section 81.046(b) governs the release of this information. You do not inform us that any of the release provisions of section 81.046 are applicable in this instance. Accordingly, based upon your representations and our review of the responsive information, we agree 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. As our ruling is dispositive, we need not address your remaining argument against disclosure.

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/dls

Ref: ID# 411662

Enc. Submitted documents

c: Requestor
(w/o enclosures)