



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 7, 2011

Mr. Monty Waters  
Assistant General Counsel  
Texas Department of State Health Services  
P.O. Box 149347  
Austin, Texas 78714-9347

OR2011-04832

Dear Mr. Waters:

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# 414007 (DSHS File 18517/2011).

The Texas Department of State Health Services (the "department") received a request for (1) any state investigations of cancer clusters in two named counties, (2) the number of cases of rare sarcomas reported to the state in a named county from 2009 through the date of the request, (3) correspondence between the department and a specified city regarding an investigation, and (4) information regarding any steps taken to determine if potential cancer clusters exist in a named county and determinations on how such an event would be addressed. You state some information has been, or will be, released to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception 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. This exception encompasses information that other statutes make confidential, such as section 82.009 of the Health and Safety Code, which protects information provided to the department for purposes of the state cancer registry. The Texas Board of Health (the "board") is required to maintain a cancer registry for the state. Health & Safety Code § 82.004. Section 82.008 of the Health and Safety Code provides in relevant part:

- (a) To ensure an accurate and continuing source of data concerning cancer, each health care facility, clinical laboratory, and health care practitioner shall

furnish to the board or its representative, on request, data the board considers necessary and appropriate that is derived from each medical record pertaining to a case of cancer that is in the custody or under the control of the health care facility, clinical laboratory, or health care practitioner. The department may not request data that is more than three years old unless the department is investigating a possible cancer cluster.

...

(c) The data required to be furnished under this section must include patient identification and diagnosis.

(d) The department may access medical records that would identify cases of cancer, establish characteristics or treatment of cancer, or determine the medical status of any identified patient from the following sources:

(1) a health care facility or clinical laboratory providing screening, diagnostic, or therapeutic services to a patient with respect to cancer; or

(2) a health care practitioner diagnosing or providing treatment to a patient with cancer, except as described by Subsection (g).

(e) The board shall adopt procedures that ensure adequate notice is given to the health care facility, clinical laboratory, or health care practitioner before the department accesses data under Subsection (d).

*Id.* § 82.008(a), (c)-(e). Section 91.4 of title 25 of the Texas Administrative Code enumerates the information required to be reported for the registry. 25 T.A.C. § 91.4. Section 82.009 makes this information confidential, providing in relevant part:

(a) Reports, records, and information obtained under this chapter are confidential and are not subject to disclosure under [the Act], are not subject to subpoena, and may not otherwise be released or made public except as provided by this section or Section 82.008(h). The reports, records, and information obtained under this chapter are for the confidential use of the department and the persons or public or private entities that the department determines are necessary to carry out the intent of this chapter.

(b) Medical or epidemiological information may be released:

(1) for statistical purposes in a manner that prevents

identification of individuals, health care facilities, clinical laboratories, or health care practitioners;

(2) with the consent of each person identified in the information; or

(3) to promote cancer research, including release of information to other cancer registries and appropriate state and federal agencies, under rules adopted by the board to ensure confidentiality as required by state and federal laws.

Health & Safety Code § 82.009(a)-(b). Although, you state the submitted information consists of information the department obtained under section 82.008, we find most of the information is not the type of information required to be reported to the registry as enumerated in section 91.4 of title 25 of the Texas Administrative Code and thus is not information the department obtained under chapter 82 for the maintenance of a cancer registry. We have marked the information that is confidential under section 82.009(a) and must be withheld under section 552.101 of the Government Code, as you inform us the requestor has not provided any information that would permit disclosure under the exceptions in section 82.009. *See id.* § 82.009(b). As you raise no additional exceptions for the remaining information, it must be released to the requestor.

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,



Misty Haberer Barham  
Assistant Attorney General  
Open Records Division

MHB/eeg

Ref: ID # 414007

Enc. Submitted documents

c: Requestor  
(w/o enclosures)