



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 23, 2011

Ms. Cary Grace  
Assistant City Attorney  
City of Austin  
P.O. Box 1088  
Austin, Texas 78767-8828

OR2011-08951

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# 422101.

The Austin/Travis County Health and Human Services Department (the "department") received a request for information related to complaints made against, and the results of inspections of, a specified business. You claim that some of the requested 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. We assume the department has released any other information it maintains that would be responsive to this request, to the extent such information existed when the department received the request. If not, then the department must release any such information immediately.<sup>1</sup> See Gov't Code §§ 552.221, .301, .302; Open Records Decision No. 664 (2000).

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, like section 81.046 of the Health and Safety Code, which provides in part:

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<sup>1</sup>We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

(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).

(c) Medical or epidemiological information may be released:

...

(2) with the consent of each person identified in the information[.]

Health & Safety Code § 81.046(a), (b), (c)(2). 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. You state the submitted information was acquired or created during an investigation conducted by the department pursuant to the provisions of chapter 81; thus, we agree that section 81.046 governs the release of this information. The exceptions to confidentiality in sections 81.046(d) and 81.046(f) are not applicable in this instance. However, in this instance the requestor may be, or may represent, the individual who is the subject of the submitted information. *See* Health & Safety Code § 81.046(c)(2). In Open Records Decision No. 577, this office also concluded section 81.046(c)(2), 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.<sup>2</sup> Open Records Decision No. 577 at 3 (1990).

Therefore, we find that if the department receives proper consent from the requestor under section 81.046(c)(2), then the requestor has a right of access under that section to the medical or epidemiological information contained in the submitted documents and it must be released to him. In that case, 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. If the department does not receive proper consent, then it must withhold

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<sup>2</sup>*See* 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).

the submitted information in its entirety under section 552.101 in conjunction with section 81.046.

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,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/bs

Ref: ID# 422101

Enc. Submitted documents

c: Requestor  
(w/o enclosures)