



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 5, 2011

Ms. Myrna S. Reingold
Galveston County
722 Moody, 5th Floor
Galveston, Texas 77550

OR2011-09509

Dear Ms. Reingold:

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# 422579.

The Galveston County Health District (the "health district") received a request for information related to suspected cases of ciguatera fish poisoning. You claim 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.

Initially, we note a portion of the submitted information, which we have marked, is not responsive to the instant request for information because it was created after the date the request for information was received. This ruling does not address the public availability of the information that is not responsive to the request, and the health district is not required to release such information in response to this request.

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, including chapter 81 of the Health and Safety Code, which codifies the Communicable Disease Prevention and Control Act (the "CDPCA"). Section 81.046 of the Health and Safety Code provides in relevant part:

- (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. *See id.* § 81.046(b)-(d), (f); ORD 577. You state ciguatera fish disease is a reportable disease or health condition under the CDPCA. *See* 25 T.A.C. § 97.1(15) (defining “notifiable condition” as “[a]ny outbreak, exotic disease, or unusual group expression of illness which may be of public health concern” and is the same as “reportable disease” used in the Health and Safety Code). You also state the submitted information was either acquired or created by the health district under chapter 81. Based upon your representations, we agree section 81.046 governs the release of this information. The exceptions to confidentiality in subsections 81.046(d) and 81.046(f) are not applicable in this instance. However, the requestor represents the individuals who are 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.¹ ORD 577 at 3. Therefore, we find if the health district receives consent from the requestor’s clients 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 generally be released to him. In that case, the health district must generally withhold the remaining

¹*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).

information under section 552.101 of the Government Code in conjunction with section 81.046 of the Health and Safety Code. If the health district does not receive consent, then it must generally withhold the submitted information in its entirety under section 552.101 in conjunction with section 81.046.

However, we note some of the submitted information is also subject to the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section also encompasses the MPA, and section 159.002 of the MPA provides in part:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(a)-(c). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004; Open Records Decision No. 598 (1991). This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). We have also found when a file is created as the result of a hospital stay, all the documents in the file relating to diagnosis and treatment constitute physician-patient communications or "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician." Open Records Decision No. 546 (1990). Medical records must be released on the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Occ. Code §§ 159.004, .005. We have marked the portion of the submitted information that constitutes medical records subject to the MPA. ORD 598. If the requestor provides proper consent in accordance with the MPA, then the health district must release the marked medical records. If the requestor does not provide proper consent, then the health district must generally withhold the marked medical records under section 552.101 of the Government Code in conjunction with the MPA.

As noted above, the medical records subject to the MPA also contain medical or epidemiological information subject to the release provision of section 81.046(c)(2) of the Health and Safety Code. If the requestor does not provide consent in accordance with the MPA, but does provide consent that complies with section 81.046, then there is a conflict between the confidentiality provided by the MPA and the access provided by section 81.046. Where information falls within both a general and a specific statutory provision, the specific provision prevails over the general provision, unless the general provision was enacted later and there is clear evidence that the legislature intended the general provision to prevail. *See* Gov't Code § 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision); *Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones). The MPA is a more specific statute than section 81.046 because the MPA applies specifically to medical records, while section 81.046 applies generally to all records created as part of an investigation into cases of diseases or health conditions. Although the release provisions in section 81.046 were later enacted, we have no indication the legislature intended that section 81.046 prevail over the MPA.² Therefore, if the requestor does not provide proper consent under the MPA, the health district must withhold the medical records we have marked under section 552.101 in conjunction with the MPA. *See* ORD 598.

In summary, if the requestor provides proper consent in accordance with the MPA, then the health district must release the marked medical records. If the requestor does not provide proper consent, then the health district must withhold the marked medical records under section 552.101 of the Government Code in conjunction with the MPA. If the health district receives consent from the requestor under section 81.046(c)(2), then the remaining medical or epidemiological information contained in the submitted documents must be released. In that case, the health district 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 health district does not receive consent under section 81.046(c)(2), then it must withhold the remaining 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,

²*See* Act of August 5, 1981, 67th Leg., 1st C.S., ch. 1, § 1, 1981 Tex. Gen. Laws 1, 31 (enacting MPA); Act of June 2, 1987, 70th Leg., R.S., ch. 543, § 10, 1987 Tex. Gen. Laws 2176, 2180-81 (enacting statutory predecessor to Health & Safety Code § 81.046(c)(2)).

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,

A handwritten signature in black ink, appearing to read 'Tamara Wilcox', written in a cursive style.

Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

Ref: ID# 422579

Enc. Submitted documents

c: Requestor
(w/o enclosures)