



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 8, 2011

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

OR2011-09678

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# 423227 (DSHS File 18589/2011).

The Texas Department of State Health Services (the "department") received a request for a database that tracks the results of blood tests of children with elevated levels of lead in their bloodstreams during a specified time period.¹ You claim the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We also have considered comments submitted by the requestor. *See* Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

Initially, we note the submitted names and street addresses are not responsive to the instant request because the requestor specifically excluded that information from his request. The department need not release non-responsive information in response to this request, and this ruling will not address that information.

¹We note the department sought and received clarification of the instant request from the requestor. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date the request is clarified or narrowed).

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information protected by other statutes. Section 88.002 of the Health and Safety Code provides in pertinent part:

(a) Except as specifically authorized by this chapter, reports, records, and information furnished to a health authority, a regional director, or the department that relate to cases or suspected cases of children with blood lead levels of concern or lead poisoning 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 childhood lead poisoning and children with blood lead levels of concern are not public information under the open records law, Chapter 552, Government Code, and may not be released or made public on subpoena or otherwise except as provided by this chapter.

(c) Medical, epidemiologic, or toxicologic information may be released:

(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, appropriate state agencies, health authorities, regional directors, and public officers of counties and municipalities as necessary to comply with this chapter and related rules;

(4) to appropriate federal agencies, such as the Centers for Disease Control and Prevention of the United States Public Health Service, except that the information must be limited to the information requested by the agency; or

(5) to medical personnel to the extent necessary in a medical emergency to protect the health or life of the child identified in the information.

Health & Safety Code § 88.002(a), (b), (c). The department states the submitted responsive information relates to children with blood lead levels of concern or lead poisoning. Thus, we find section 88.002 is applicable to the responsive information. The requestor argues the responsive information would be used for statistical purposes pursuant to

subsection 88.002(c)(1). The requestor further asserts the responsive information does not reveal the identities of the children whose information is at issue. However, the department states none of the release provisions in section 88.002(c) apply in this instance. Whether a release of information subject to section 88.002 of the Health and Safety Code is for statistical purposes is a question of fact. This office cannot resolve questions of fact in the open records process, but instead must rely on the representations of the governmental body requesting our opinion. *See generally* Open Records Decision Nos. 554 (1990), 552 (1990). Accordingly, we conclude the submitted responsive information is confidential under section 88.002 of the Health and Safety Code, and must be withheld from the requestor under section 552.101 of the Government Code.

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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 423227

Enc. Submitted documents

c: Requestor
(w/o enclosures)