



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 15, 2012

Ms. Claire Yancey
Assistant District Attorney
Denton County Criminal District Attorney's Office
P.O. Box 2850
Denton, Texas 76202

OR2012-18464

Dear Ms. Yancey:

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# 471041.

The Denton County Health Department (the "department") received a request for information related to West Nile victims during a specified time period. You claim the submitted 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 have also received and considered comments submitted by the requestor. *See Gov't Code § 552.304* (providing that interested party may submit comments stating why information should or should not be released).

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 other statutes make confidential. You claim section 552.101 in conjunction with section 81.046 of the Health and Safety Code, which provides in 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).

Health & Safety Code § 81.046(a)-(b). In Open Records Decision No. 577 (1990), this office concluded 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* ORD 577; Health & Safety Code § 81.046(b)-(d), (f). We understand the department acquired the submitted information in the course of investigating suspected cases of West Nile infections. Based on your representations and our review of the information at issue, we find the submitted information falls within the scope of section 81.046(b). It does not appear that any of the release provisions of section 81.046 are applicable in this instance. We therefore conclude the department must generally withhold the submitted information under section 552.101 of the Government Code in conjunction with section 81.046 of the Health and Safety Code.

We note the requestor claims the requested information was previously released to other Denton County departments, state and federal health agencies, and other cities. Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or confidential under law. *See id.* 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). We note, pursuant to subsection 81.046(c), medical or epidemiological information that is confidential under section 81.046 may be released on the following grounds:

...

(3) to medical personnel treating the individual, appropriate state agencies in this state or another state, a health authority or local health department in this state or another state, federal, county, or district courts to comply with this chapter and related rules relating to the control and treatment of communicable diseases and health conditions or under another state or federal law that expressly authorizes the disclosure of this information; [or]

(4) to appropriate federal agencies, such as the Centers for Disease Control and Prevention of the United States Public Health Service, but the information must limited to the name, address, sex, race, and occupation of the patient, the date of disease onset, the probably source of infection, and other requested information related to th case or suspected case of a communicable disease or health condition[.]

Health & Safety Code § 81.046(c)(3)-(4). Thus, if the release of the information at issue to other Denton County departments, state and federal health agencies, and other cities was pursuant to section 81.046(c), it is not a voluntary release to the public for purposes of section 552.007. However, if the information was released to these entities and the release was not pursuant to section 81.046(c), we note the department claims section 552.101 of the Government Code. Section 552.101 makes information confidential by law for section 552.007 purposes. Therefore, because the information is confidential under section 552.101 in conjunction with section 81.046 of the Health and Safety Code and release to this requestor is expressly prohibited by law, a prior voluntary release would not result in the waiver of confidentiality. Gov't Code § 552.007. Accordingly, the department must withhold the submitted information from the requestor under section 552.101 of the Government Code in conjunction with section 81.046 of the Health and Safety 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/tch

Ref: ID# 471041

Enc. Submitted documents

c: Requestor
(w/o enclosures)

