



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 10, 2012

Ms. Melanie Barton  
Assistant District Attorney  
Dallas County  
411 Elm Street, Fifth Floor  
Dallas, Texas 75202

OR2012-19850

Dear Ms. Barton:

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# 473495.

Dallas County Health and Humans Services (the "county") received a request for e-mails to or from a named county employee regarding the topics or phrases West Nile virus, WNV, mosquitos, aerial or ground spraying, larvicide, human cases, nueroinvasive disease, and CDC. 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 representative sample of information.<sup>1</sup> We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note the requestor excluded from her request "any and all identifying information regarding any and all persons who may have contracted or are suspected to have contracted any sort of virus or fever in the responsive files[.]" Thus, any such information

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<sup>1</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

within the submitted documents is not responsive to the request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the county is not required to release this information in response to this request. *See generally Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dismissed).

Next, you indicate some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2012-18078 (2012). In Open Records Letter No. 2012-18078, we determined the county must 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 have no indication the law, facts, and circumstances on which the prior ruling was based have changed. Accordingly, to the extent the information in the current request is identical to the information previously requested and ruled upon by this office, we conclude the county must continue to rely on Open Records Letter No. 2012-18078 as a previous determination and withhold the information in accordance with that ruling. To the extent the submitted information is not subject to Open Records Letter No. 2012-18078, we will address your arguments against disclosure.

Next, you acknowledge, and we agree, the county failed to comply with the procedural requirements of section 552.301 of the Government Code. A governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See Gov't Code § 552.302; Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no petition.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). The presumption that information is public under section 552.302 can generally be overcome by demonstrating the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). Section 552.101 can provide a compelling reason to overcome this presumption. Therefore, we will address your arguments under this exception.

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

- (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 unless an exception set out in the statute applies. *See id.* § 81.046(b)–(d), (f); ORD 577. You state the requested information was gathered or created during an investigation of a West Nile virus outbreak that was conducted by the county pursuant to the provisions of chapter 81. Based on your representations and our review, we agree the submitted information is confidential under section 81.046.

Section 81.046(c) provides the following:

Medical or epidemiological 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 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, or 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;
  - (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 be limited to the name, address, sex, race, and occupation of the patient, the date of disease onset, the probable source of infection, and other requested information relating to the case or suspected case of a communicable disease or health condition;
- or

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

Health & Safety Code § 81.046(c). Thus, access to information that is confidential under section 81.046 is governed by section 81.046(c). *See In re Tex. Dep't State Health Servs.*, 278 S.W.3d 1, 5 (Tex. App.—Austin 2008, orig. proceeding) (“because the information [the requestor] seeks clearly falls within the ambit of the confidentiality provisions of section 81.046 [of the Health and Safety Code], it cannot be disclosed in a request for public information, by subpoena, or otherwise unless the exception to disclosure in subsection (c) applies”). The requestor asserts none of the submitted information should be withheld under section 81.046 because the purpose of that section is to protect the privacy of affected individuals and, as noted above, her request for information specifically excluded the identifying information of any person. In Open Records Decision 577, we concluded the conditions placed on the release of medical or epidemiological information are designed to protect individual privacy. ORD 577 at 4. In that decision, we also determined the requestor’s medical and epidemiological information was required to be released to him in accordance with section 81.046(c)(2) because he had a right of access to his own information under the former version of section 552.023 of the Government Code, but the medical and epidemiological information pertaining to other individuals may not be released without the consent of the other individuals. ORD 577 at 4-5; *see* Health & Safety Code § 81.046(c)(2); *see also* Gov’t Code § 552.023(a) (“[a] person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests”). The requestor has not explained how release of the submitted responsive medical or epidemiological information is for “statistical purposes.” *See* Health & Safety Code § 81.046(c)(1). The requestor also does not assert any person whose information is at issue has consented to the release of that person’s information. *See id.* §81.046(c)(2). In addition, the requestor does not argue the other release provisions of section 81.046(c) are applicable. *See id.* §81.046(c)(3)-(5). Accordingly, we find the requestor has not established she has a right of access to any of the submitted responsive information pursuant to section 81.046(c). Therefore, the county must withhold the submitted responsive information in its entirety 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](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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/tch

Ref: ID# 473495

Enc. Submitted documents

c: Requestor  
(w/o enclosures)