



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 20, 2013

Ms. Elaine Nicholson
Assistant City Attorney
City of Austin Law Department
P.O. Box 1088
Austin, Texas 78767-1088

OR2013-08323

Dear Ms. Nicholson:

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# 488079.

The City of Austin (the "city") received a request for information pertaining to a specified incident involving a named individual. 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.

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:

(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 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 explain the submitted information was gathered or created by the city's Health and Human Services Department during an investigation under chapter 81 of a possible case of food-borne illness. Based on your representations and our review, 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 submitted information reveals the requestor is the spouse of the person identified in the information at issue, and that he may be asking for the information on behalf of his spouse. *See* Health & Safety Code § 81.046(c)(2). In Open Records Decision No. 577, this office 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. ORD 577 at 3. Therefore, we find if the city receives consent from the requestor's spouse 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 city 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 city does not receive consent, then it must withhold 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, 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 "Claire Morris Sloan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 488079

Enc. Submitted documents

c: Requestor
(w/o enclosures)