



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 16, 2013

Ms. Cheryl Elliott Thornton
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002

OR2013-17992

Dear Ms. Thornton:

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# 502455 (CAO File No. 13PIA0380).

Harris County Public Health & Environmental Services ("HCPHES") received a request for seven categories of information pertaining to the requestor's client and a specified outbreak. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address HCPHES's procedural obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information that it wishes to withhold. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). You state HCPHES received the request for information on July 24, 2013. Accordingly, the ten-business-day deadline for requesting a ruling from this office was August 7, 2013. The envelope in which HCPHES requested a ruling from this office bears a postmark of August 8, 2013. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Therefore, we find HCPHES failed to comply with the procedural requirements of section 552.301(b) of the Government Code in requesting this decision.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Although you raise section 552.103 of the Government Code, section 552.103 is a discretionary exception to disclosure that protects only a governmental body's interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions), 473 (1987) (section 552.103 may be waived). As such, section 552.103 does not provide a compelling reason to withhold information for purposes of section 552.302. Therefore, HCPHES may not withhold any of the submitted information under section 552.103 of the Government Code. However, because section 552.101 can provide a compelling reason to overcome this presumption, we will address the applicability of section 552.101 to 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" and encompasses information protected by statute. Gov't Code § 552.101. Chapter 81 of the Health and Safety Code codifies the Communicable Disease Prevention and Control Act. Section 81.046 of the Health and Safety Code provides in pertinent 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 that any information acquired or created during an investigation under chapter 81 is confidential and may not be released unless it is subject to an exception set out in the statute. You indicate, and the documents reflect, that the submitted information was furnished to and used by HCPHES pursuant to the provisions of chapter 81. Pursuant to

subsection 81.046(c), HCPHES may release medical or epidemiological information that is confidential under section 81.046 on the following grounds:

- (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). We note the requestor has provided written authorizations from some of the individuals identified in the requested documents. The requestor claims the consent forms comply with the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 42 U.S.C. §§ 1320d-1320d-8. However, we note section 81.046(c) of the Health of the Safety Code, not HIPAA, governs the release of this information. As this office is unable to make a determination on the validity of the consent provided, we must rule conditionally. Accordingly, if HCPHES receives proper consent from the requestor under section 81.046(c)(2), then the medical or epidemiological information that pertains to the requestor's clients must be released. *See* Health & Safety Code § 81.046(c)(2) (providing that medical or epidemiological information may be released with the consent of each person identified in the information); *see also* ORD 577 (concluding that section 81.046 permits health department to provide requestor with medical or epidemiological information concerning person who signed release or any member of her family for whom she had right to give consent). In that instance, HCPHES must withhold the remaining information under section 552.101 in conjunction with section 81.046 of the Health and Safety Code. Otherwise, if HCPHES does not receive consent under section 81.046(c)(2), then it must withhold the submitted information in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 81.046 of the Health and Safety Code.

You ask this office to issue a previous determination that would permit HCPHES to withhold information under section 81.046 of the Health and Safety Code without the necessity of requesting a decision by this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (previous determinations). We decline to issue such a decision at this time. Accordingly, 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/bhf

Ref: ID# 502455

Enc. Submitted documents

c: Requestor
(w/o enclosures)