



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 28, 1994

Ms. Kari A. Hernandez
Assistant City Attorney
Office of the City Attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR94-755

Dear Ms. Hernandez:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 29670.

The City of El Paso (the "city") has received a request for "copies of any and all inspection reports prepared by the El Paso County Health Department from 1989 through 1994 for" Chico's Tacos, 3401 Dyer Street, El Paso, Texas. You have submitted the requested information to us for review.

Section 552.301(a) of the Government Code provides:

A governmental body that receives a written request for information that it considers to be within one of the exceptions under Subchapter C must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions. The governmental body must ask for the attorney general's decision within a reasonable time but not later than the 10th calendar day after the date of receiving the written request. [Footnote omitted.]

Section 552.302 provides:

If a governmental body does not request an attorney general decision as provided by Section 552.301(a), the information requested in writing is presumed to be public information.

You received the open records request by letter dated August 19, 1994. You requested a decision from this office by letter dated October 6, 1994. On the basis of these facts, we conclude that the city failed to request a decision within the ten day period section 552.301(a) of the Government Code mandates.

When a governmental body fails to request a decision within ten days of receiving a request for information, the information at issue is presumed public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982) at 1-2. The governmental body must show a compelling reason to withhold the information to overcome this presumption. See *Hancock*, 797 S.W.2d at 381. Normally, a governmental body can overcome the presumption of openness by a compelling demonstration that the governmental body should not release the requested information to the public, *i.e.*, that some other source of law makes the information confidential or that third party interests are at stake. Open Records Decision No. 150 (1977) at 2. You seek to withhold the requested information under section 552.101 of the Government Code.

Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You assert that section 552.101 in conjunction with section 81.046 of the Health and Safety Code makes the requested information confidential. Section 81.046 provides, in pertinent part:

(a) Reports, records, and information furnished to a health authority or the department 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 Open Records Act] and may not be released or made public on subpoena or otherwise except as provided by Subsections (c) and (d).

See also Open Records Decision No. 577 (1990) (addressing applicability of section 81.046 to information relating to reports of shigellosis made to county health authority).

We have examined the information submitted to us for review. It relates to reports made to the El Paso City-County Health and Environmental District concerning allegations of a reportable health condition. We understand that none of the exceptions to confidentiality set forth in subsections (c) and (d) of section 81.046 apply in this instance.

Accordingly, we conclude that the city must withhold the requested information under section 552.101 of the Government Code.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/GCK/rho

Enclosures: Submitted documents

Ref.: ID# 29670

cc: Ms. Kay Freeman
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(w/o enclosures)