



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 22, 1995

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

OR95-786

Dear Ms. Hernandez:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 31064.

The City of El Paso (the "city") received a request for:

all records maintained by the El Paso City-County Health District concerning any investigation conducted by or at the direction of the District related to illness of patrons of any K-Bob's Steakhouse in El Paso, Texas at any time from April 1, 1994 to the date of disclosure of the records. . . includ[ing] any records of any private physician, hospital, other health care provider, or laboratory obtained by the District in connection with its investigation. . . [and] records that would otherwise be protected from public disclosure, but which pertain to [the requestor's] clients.

We understand that the city has provided the requestor with documents pertaining to his clients, for which the requestor provided written consents, and documents that were previously disclosed to the media. You claim that the remainder of the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 81.046 of the Health and Safety Code.

We note that the date of the original request is June 3, 1994, and that the city received the request the same day. However, the city did not request a decision from this office until December 22, 1994. Consequently, you failed to request a decision within the ten days required by section 552.301(a) of the Government Code.

Section 552.301(a) requires a governmental body to release requested information or to request a decision from the attorney general within ten days of receiving a request for information the governmental body wishes to withhold. 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. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (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). As you acknowledge in your request, the governmental body must show a compelling interest to withhold the information to overcome this presumption. See *Hancock*, 797 S.W.2d at 381.

However, where information is made confidential by other law, the presumption of openness is overcome. See Open Records Decision No. 150 (1977). Therefore, we will consider whether another law makes the requested information confidential.

Section 81.046 of the Health and Safety Code provides in 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).

(c) Medical or epidemiological information may be released:

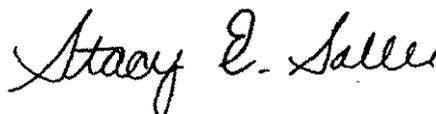
(1) for statistical purposes if released in a manner that prevents the identification of any person; [and]

(2) with the consent of each person identified in the information.

The statute therefore expressly makes the requested information confidential, thereby overcoming the presumption of openness. The requestor claims that he falls within an exception to the confidentiality provision because he is requesting the information "for statistical purposes" and is agreeable to the documents being redacted so that no person is identified. However, we believe that the release of documents under this particular exception is discretionary with the city. In a previous decision, this office concluded that language similar to that in section 81.046(c) was discretionary. Attorney General Opinion JM-1144 (1990). We make the same conclusion in this case. The use of the word "may" in subsection (c) renders the release of the information covered by the statute discretionary with the governmental body unless another statute provides otherwise.¹ Accordingly, the city has the discretion to release the requested information. We note that if the city chooses, in its discretion, to release any requested information, it may release only "medical or epidemiological information" "in a manner that prevents the identification of any person" in compliance with the statute.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Government Section

SES/LRD/rho

Ref.: ID# 31064

Enclosures: Submitted documents

¹As we stated in Open Records Decision No. 577 (1990), where the individuals involved in the requested information have given their consent to the release of that information, they have a special right of access to that information under section 552.023 of the Government Code. In that situation, where the Open Records Act and the statutory exception must be read together, the exception is not discretionary. See Open Records Decision No. 577 (1990) at 4. We understand that the city has released information concerning the requestor's clients to the requestor upon their consent. Therefore, that provision is not involved here.

cc: Mr. Albert Armendariz, Jr.
Attorney at Law
501 East Nevada
El Paso, Texas 79902
(w/o enclosures)