



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 20, 1995

Mr. Dan LaFleur  
Attorney  
Office of General Counsel  
Texas Department of Health  
1100 West 49th Street  
Austin, Texas 78756-3199

OR95-1513

Dear Mr. LaFleur:

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# 21930.

You inform us that the Texas Department of Health (the "department") received a request for information. You assert that the requested information is made confidential by sections 161.021 and 161.022 of the Health and Safety Code. As you did not provide a copy of the request for information, we must assume from your arguments that the requestor seeks certain completed questionnaires. You enclosed a sample incomplete questionnaire and the cover letter that accompanies the questionnaire.

The cover letter states that "In response to a citizen concern of environmental pollution in your area, the Texas Department of Health will review available environmental data to determine if contaminants are present at levels which could affect the health of local residents . . . . In order to determine the necessity and feasibility of conducting a follow-up health investigation we need to determine your willingness to participate [in the health investigation]."

At the top of the questionnaire is printed, "Texas Department of Health Environmental Epidemiology Program." The questionnaires contain the following information: name, address, age, how long lived in current neighborhood, race, whether of Spanish origin, number of people in the household, education level, willingness to

participate in a health study, participant's rating of overall health, how worried is participant about environmental hazards, what makes participant worry most about environmental hazards, and participant's opinion about whether the community has more or less pollution than other communities. You state the department "uses [the questionnaires] to review available environmental data and to determine if a follow-up health investigation is indicated."

Section 552.101 of the Government Code excepts from required public disclosure information that is confidential by law, either constitutional, statutory, or by judicial decision. Section 161.021 of the Health and Safety Code authorizes certain organizations and entities to provide certain medical information to the department and other entities for use in either a study to reduce morbidity and mortality, or the identification of persons who need immunization. Section 161.021 authorizes the release to certain named entities of information that (1) relates to the conditions and treatment of any person, and (2) is to be used in a study to reduce morbidity or mortality or to identify persons who may need immunization.

Section 161.022 of the Health and Safety Code contains restrictions on the use and publication of section 161.021 information. Section 161.022 reads as follows:

(a) The department, a medical organization, a hospital, or a hospital committee may use or publish information under Section 161.021 only to advance medical research or medical education in the interest of reducing morbidity or mortality, except that a summary of the studies may be released by those persons for general publication.

(b) The identity of a person whose condition or treatment has been studied is confidential and may not be revealed except in immunization surveys conducted for the department to identify persons who need immunization.

(c) Interviews, reports, statements, memoranda, and other information, other than immunization information, furnished under this chapter and any findings or conclusions resulting from the study of that information, are privileged.

You assert that section 161.022 makes the questionnaires confidential because you say the information in the questionnaires relates to the condition and treatment of the individual answering the questionnaire, and because you say the department intends to use the information in a study to reduce morbidity and mortality. However, we need not consider whether these provisions apply to the questionnaire at issue, as we believe another broader statute applies.

Section 161.0213 of the Health and Safety Code provides as follows:

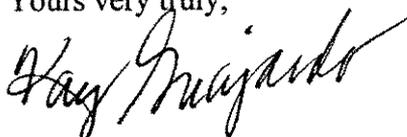
Reports, records, and information furnished to the commissioner or the commissioner's designee or the Texas Natural Resource Conservation Commissioner that relate to an epidemiologic or toxicologic investigation of human illnesses or conditions and of environmental exposures that are harmful or believed to be harmful to the public health are not public information under the open records law, . . . and are subject to the same confidentiality requirements as described by Section 81.046 [of the Health and Safety Code].

Based on the questions contained in them, we conclude that the questionnaires "relate to an epidemiologic or toxicologic investigation of human illnesses or conditions and of environmental exposures that are harmful or believed to be harmful to the public health." Thus, the questionnaires are subject to the confidentiality requirements in section 81.046 of the Health and Safety Code.

Section 81.046 generally makes confidential reports, records, and information furnished to a health authority or the department that relate to cases or suspected cases of diseases or health conditions and provides that such information may not be released on subpoena or otherwise. *See* Health and Safety Code § 81.046(a), (b). Section 81.046(c) of that code provides that medical or epidemiological information may be released in certain circumstances. Thus, unless the release here is under a circumstance listed in section 81.046(c), the department must not release the questionnaires.

We are resolving this matter with this 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 may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo  
Assistant Attorney General  
Open Records Division

KHG/ch

Ref.: ID# 21930

Enclosures: Submitted documents