



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 3, 1997

Ms. Linda L. Sjogren  
Assistant City Attorney  
City of San Angelo  
P.O. Box 1751  
San Angelo, Texas 76902

OR97-1521

Dear Ms. Sjogren:

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# 34225.

The City of San Angelo (the "city") received two separate requests for information regarding a closed investigation pertaining to a specific restaurant involved in a Hepatitis A outbreak. Although you contend that one of the requests lacks specificity<sup>1</sup>, you have submitted documents for our review, contending the information is excepted from required public disclosure under section 552.101 of the Government Code and section 81.046 of the Health and Safety Code.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 81.046 of the Health and Safety Code provides:

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<sup>1</sup>In response to the request at issue, the city must make a good-faith effort to relate the request to information in the city's possession and must help the requestor to clarify his request by advising him of the types of information available. We note that if a request for information is unclear, a governmental body may ask the requestor to clarify the request. Gov't Code § 552.222(b); *see also* Open Records Decision No. 561 (1990) at 8.

(b) Reports, records, and information relating to cases or suspected cases of diseases or health conditions are not public information under Chapter 552, Government Code, 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;

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

(3) to medical personnel, appropriate state agencies, or county and district courts to comply with this chapter and related rules relating to the control and treatment of communicable diseases and health conditions;

(4) to appropriate federal agencies, such as the Centers for Disease Control of the United State Public Health Services, but 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.

(d) In a case of sexually transmitted disease involving a minor under 13 years of age . . .

We note that the documents submitted to this office for review include a Reportable Disease Worksheet and Food Service Establishment Inspection Reports pertinent to the restaurant at issue. Disclosure of the Reportable Disease Worksheet is clearly governed by section 81.046 of the Health and Safety Code. As none of the provisions for release outlined in section 81.046(c) apply<sup>2</sup>, you must withhold it.

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<sup>2</sup>You have not indicated that you have the consent of the affected individual regarding release of the communicable disease information.

The Food Inspection Reports, however, are ordinarily public information as provided by 25 TAC § 229.171(b). This provision is a Texas Department of Health regulation governing food and drug handling and provides as follows:

(b) Report of inspections. Whenever an inspection is made of food service establishment, the findings shall be recorded on the inspection report form referred to in subsection (f) of this section. The original of the inspection report form shall be furnished to the owner or person in charge at the completion of the inspection and constitutes a written notice. The inspection report form shall summarize the requirements of these sections and shall set forth a weighted point value for each requirement. The rating score of the establishment shall be the total of the weighted point value for all violations, subtracted from 100. *The completed inspection report form is a public document that shall be made available for public disclosure to any person who requests it according to law.* (Emphasis added.)

25 TAC § 229.171(b). You inform us that you have furnished to the requestors "routine" Food Inspection Reports involving the restaurant, however, you seek to withhold the remaining Food Inspection Reports subject to the confidentiality provisions of section 81.046(b) of the Health and Safety Code.

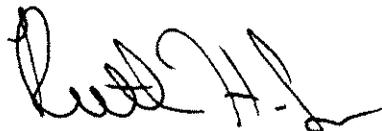
You assert without further explanation that all of the information submitted, including the Food Inspection Reports, may be categorized as epidemiological reports of disease outbreaks or of individual cases of suspected disease which are addressed in chapter 81.047 of the Health and Safety Code. We disagree. Food Inspection Reports are report forms summarizing the requirements of food and drug handling under the auspices of the Texas Department of Health which sets forth a weighted point value of all violations of the established standards for food service establishments. See 25 TAC § 229.171(f). Generally, the reports do *not* indicate disease outbreaks or individual cases of suspected disease. You state that you have released "routine" inspection reports, but you have withheld other reports regarding inspections over a span of seven years which reveal food handling violations. Additionally, you have submitted for our review a "Code Enforcement Request" form indicating a customer complaint regarding pests on the premises. In the aggregate, these actions indicate to us that you believe that *any* inspection report relates to the investigation of particular instances of disease. Such an interpretation of section 81.046 of the Health and Safety Code would preclude release of *any* unfavorable inspection report. We do not believe this is the intent of section 81.046, and is clearly contrary to section 229.171, title 25 of the Texas Administrative Code.

Because the records of a governmental body are presumed to be open under the Open Records Act unless they fall into a particular exception from disclosure, the governmental body has the burden of proving that an exception applies to the records requested from it. Open Records Decision No. 542 (1990). Here, the general presumption of openness under the Open Records Act is heightened by the regulation making completed inspection reports public information. 25 TAC § 229.171(b). Because the inspection reports do not appear to be excepted from public disclosure and you have failed to adequately explain why the information should be withheld, you must release it.

The final document submitted for our review is entitled "Code Enforcement Request" and appears to be a consumer complaint regarding the food service establishment involved in the disease outbreak. You claim that section 81.046 of the Health and Safety Code makes this information confidential. The information in the complaint does not indicate a disease outbreak or individual case of suspected disease; it simply indicates what the complainant perceives as a violation of food handling standards. Moreover, it was not related to the investigation of this particular communicable disease incident as the complaint was received more than one year prior to the incident at issue. Because the complaint is not made confidential pursuant to section 81.046 of the Health and Safety Code and you have raised no other basis for excepting the complaint from disclosure, you must release it.

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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Ruth H. Soucy". The signature is fluid and cursive, with the first name being the most prominent.

Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/LMM/ch

Ref.: ID# 34225

Enclosures: Submitted documents

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