



July 9, 1999

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

OR99-1909

Dear Mr. Waters:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 125844.

The Texas Department of Health (the “department”) received multiple requests for information pertaining to the Hepatitis A outbreaks involving a specific restaurant. Although you state that the department does not maintain some of the requested information, you claim that the submitted documents are excepted from disclosure under section 552.101 of the Government Code in conjunction with section 81.046 of the Health and Safety Code.¹ We have considered the exception you claim and have reviewed 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.” Chapter 81 of the Health and Safety Code, of which section 81.046 is a part, is commonly referred to as the Communicable Disease Prevention and Control Act. Under section 81.042, various individuals, including health professionals, school and child care administrators, and owners and managers of food handling or processing establishments, are required to make reports

¹Public Information Act does not require a governmental body to obtain information not in its possession or to prepare new information in response to a requestor. Open Records Decision No. 445 (1986). *But see* Open Records Decision No. 317 (1982) (fact that information originally generated by another entity not relevant to determination of whether it is covered by Public Information Act while possessed by governmental body).

to the department of instances of suspected cases of "reportable diseases," including communicable diseases, and "health conditions." Section 81.046 of the Health and Safety Code provides in pertinent part:

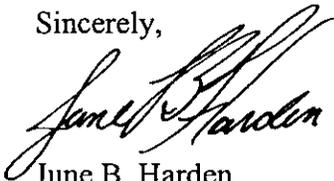
(a) Reports, records, and information furnished to a health authority or the department that relate to cases or suspected cases of diseases or health conditions are confidential and may be used only for the purposes of this chapter.

(b) Reports, records, and information relating to cases or suspected cases of diseases or health conditions are not public information under [the Public Information Act] and may not be released or made public on subpoena or otherwise except as provided by Subsections (c) and (d).

In Open Records Decision No. 577 (1990), this office concluded that any information acquired or created by the department during an investigation under chapter 81 is confidential and may not be released unless an exception set out in the statute applies. It does not appear that any of the statute's exceptions apply to the requestors. *See* Health & Safety Code § 81.046(c), (d). We agree that section 81.046(b) governs the release of this information. Thus, the department must withhold the submitted documents in their entirety.

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Sincerely,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref.: ID# 125844

Encl. Submitted documents

cc: Mr. Wade Smith
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(w/o enclosures)