



December 28, 2000

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

OR2000-4868

Dear Mr. Waters:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 142744.

The Texas Department of Health (the "TDH") received a request for information regarding test results concerning an investigation into oysters allegedly containing vibrio vulnificus in connection with Paradise Café and/or the death of Stephen W. Pierce, M.D. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with sections 81.046 and 161.0213 of the Health and Safety Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. 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 Chapter 552, Government Code, and may not be released or made public on subpoena or otherwise except as provided by Subsection (c) and (d).

Health & Safety Code § 81.046(a), (b). In Open Records Decision No. 577 (1990), this office concluded that any information acquired or created during an investigation under chapter 81 is confidential and may not be released unless an exception set out in the statute applies. You state the following regarding the submitted information:

The El Paso City Health Department (El Paso) conducted an investigation into the death of an individual who allegedly consumed oysters, which allegedly contained vibrio vulnificus, from a restaurant called Paradise Café. Specimens (human and oysters) were sent to the laboratory at TDH for testing. Test results were given to the Infectious Diseases Epidemiology and Surveillance Division (IDEAS) at TDH for their case investigation file on the individual that died, although TDH did not actually conduct an investigation.

After reviewing the submitted information, we agree that the documents at issue fall within the scope of section 81.046. Further, none of the section's permissive release provisions appear to apply. The fact that the records were transferred to TDH does not vitiate their confidential status. A governmental body may ordinarily transfer information to another governmental body subject to the Act without violating the confidentiality of the information or waiving exceptions to disclosure.¹ Therefore, TDH must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 81.046 of the Health and Safety Code. Because this provision is dispositive, we need not address whether the information is confidential under section 161.0213 of the Health and Safety Code.

The requestor submitted comments to this office arguing that the confidentiality of the test results has been waived since the results have (allegedly) been released to the media. First, the statute which makes the information confidential, section 81.046 of the Health and Safety Code, contains no provision for waiver of confidentiality. Second, mandatory exceptions under the Act, such as section 552.101, are not waivable. *See* Gov't Code § 552.352 (distribution of information considered confidential under the Act is a misdemeanor and

¹See Attorney General Opinions H-917 at 1 (1976), H-242 at 4 (1974); Open Records Decision No. 661 at 3 (1991). *But see* Attorney General Opinions DM-353 at 4 n. 6 (1995) (interagency transfer prohibited where confidentiality statute enumerates specific entities to which release of confidential information is authorized and where receiving agency is not among statute's enumerated entities), JM-590 at 4-5 (1986) (same); Open Records Decision No. 655 (1997) (same), 650 (1996) (transfer of confidential information to federal agency impermissible unless federal law requires its disclosure).

official misconduct). Whether the El Paso City Health Department released information contained in the test results to the media is irrelevant. The information is still confidential under section 81.046 of the Health and Safety Code and may not be released.

Finally, the requestor asks for the return of the original tags from the cases of oysters that were taken during the investigation by the El Paso City Health Department. You explain that “[f]or reasons unknown to TDH, two (2) original tags were seized from the oyster cases by El Paso and sent to TDH’s Seafood Safety Division.” You ask whether the original tags are confidential in the custody of TDH. Subsection (c) of section 81.061 of the Health and Safety Code provides:

(c) The department may investigate the existence of communicable disease in the state to determine the nature and extent of the disease and to formulate and evaluate the control measures used to protect the public health. A person shall provide records and other information to the department on request according to the department’s written instructions.

Subsection (a) of section 81.062 of the Health and Safety Code provides:

(a) For the purpose of an investigation under Section 81.061(c), the department may administer oaths, summon witnesses, and compel the attendance of a witness or the production of a document. The department may request the assistance of a county or district court to compel the attendance of a summoned witness or the production of a requested document at a hearing.

We presume that the original tags were taken as “records” and/or “document[s]” by the El Paso City Health Department under the authority of these statutes.² In the custody of TDH, the original tags are “records . . . furnished to . . . the department that relate to cases or suspected cases of diseases or health conditions.” Health & Safety Code § 81.046(a). They are therefore confidential under section 552.101 of the Government Code in conjunction with section 81.046 of the Health and Safety Code and must be withheld along with the rest of the requested information.

²A local health department may perform all public health functions that the municipality or county that establishes the local health department may perform. Health & Safety Code § 121.032. The governing body of a municipality or the commissioners court of a county may enforce any law that is reasonably necessary to protect the public health. Health & Safety Code § 121.003(a). Therefore, the El Paso City Health Department has the authority to compel the production of a document under subsection (a) of section 81.062 of the Health and Safety Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

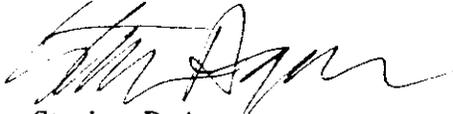
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Stephen P. Agan
Assistant Attorney General
Open Records Division

SPA/seg

Ref: ID# 142744

Encl. Submitted documents

cc: Mr. Darryl S. Vereen
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