



July 24, 2002

Mr. Manuel O. Méndez  
Bickerstaff, Heath, Smiley, Pollan, Kever & McDaniel  
1700 Frost Bank Plaza  
816 Congress Avenue  
Austin, Texas 78701-2443

OR2002-4056

Dear Mr. Méndez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 166134.

Collin County Health Care Services (the "county") received a request for four categories of information regarding Hepatitis, A, B, and C. You state, and the submitted documentation reflects, that you contacted the requestor in order to inform him of the cost of producing the requested information and to determine whether he wished the county to produce all of the information responsive to the request. See Gov't Code § 552.2615 (providing that governmental body shall provide requestor with estimate of charges if they exceed \$40). Subsequently, the requestor modified his request so that he now seeks documentation only in relation to the county's investigation of Hepatitis A incidents in restaurants, businesses, schools, and day care facilities within the county. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample<sup>1</sup> of information.<sup>2</sup>

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

<sup>2</sup>We note that the county redacted portions of the submitted information prior to submitting such information for our review. We advise that section 552.301 of the Government Code requires a governmental body to submit responsive information in a manner that permits this office to review the information. See Gov't Code § 552.301(e)(1)(D). Therefore, the county risks non-compliance with section 552.301 if it fails to submit responsive documents in non-redacted form. Such non-compliance can result in a conclusion from this office that the information at issue must be released. See Gov't Code §§ 552.006, .301, .302. We

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 statute. Chapter 81 of the Health and Safety Code codifies the Communicable Disease Prevention and Control Act. Section 81.046 of that 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 and 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 identified in the statute applies. After reviewing the submitted information, we conclude that the documents at issue fall within the scope of section 81.046. Furthermore, none of the section’s permissive release provisions appear to apply. Therefore, we conclude that the county must withhold the requested information pursuant to section 552.101 of the Government Code in conjunction with section 81.046 of the Health and Safety Code. *See* Open Records Decision No. 577 (1990).

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

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accordingly advise that with respect to any future requests for an open records decision from this office, the county should submit any responsive documents in non-redacted form. *See also id.* § 552.3035 (attorney general may not disclose to requestor or public any information submitted to attorney general under section 552.301(e)(1)(D)).

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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Karen A. Eckerle  
Assistant Attorney General  
Open Records Division

KAE/sdk

Ref: ID# 166134

Enc: Submitted documents

c: Mr. Christopher L. Kurzner  
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(w/o enclosures)