



October 15, 2002

Ms. Thao La  
Assistant District Attorney  
Dallas County - Civil Section  
411 Elm Street, 5<sup>th</sup> Floor  
Dallas, Texas 75202

OR2002-5853

Dear Ms. La:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 170674.

The Dallas County Health and Human Services Department (the “department”) received a request for the investigation report and resulting opinion regarding two cases of meningitis. 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 information. We have also considered comments submitted by the requestor. *See* Gov’t Code § 552.304 (providing that person may submit comments stating why information should or should not be released).

Initially, we must address the department’s obligations under section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. Further, pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You state that the department received the present request for information on July 18, 2002. The department did not request a decision from this office

until August 8, 2002, and did not submit the requested information for our review until August 16, 2002. Consequently, the department failed to comply with the requirements of both section 552.301(a) and section 552.301(e) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). As section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will address your arguments under that exception. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by showing that information is made confidential by another source of law or affects third party interests).

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. The submitted information appears to be subject to the Communicable Disease Prevention and Control Act, chapter 81 of the Health and Safety Code. Section 81.042 of the Health and Safety Code requires various individuals, including health professionals, school and child care administrators, and owners and managers of food-handling or processing establishments, to make reports to the "local health authority" of instances of suspected cases of "reportable diseases," including communicable diseases, and "health conditions." In regard to such reports, 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).

(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 States Public Health Service, but the 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, information may not be released, except that the child's name, age, and address and the name of the disease may be released to appropriate agents as required by Chapter 261, Family Code. If that information is required in a court proceeding involving child abuse, the information shall be disclosed in camera.

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 that statute applies. After reviewing the submitted information, we conclude that the documents at issue fall within the scope of section 81.046.

You state, however, that one of the individuals identified in the requested documents has signed an authorization for release of information that pertains to her. You have submitted a copy of the written authorization as Exhibit 2. Thus, we conclude that the department must release information that specifically pertains exclusively to the individual who provided written authorization pursuant to section 81.046(c)(2) of the Health and Safety Code. *See* Open Records Decision No. 577 (1990) (concluding that section 81.046 permits health department to provide requestor with medical or epidemiological information concerning person who signed release or any member of her family for whom she had right to give consent).

You claim that the exceptions set forth in subsections (c) or (d) of section 81.046 do not apply to the remaining information. Based on your representations and our review of the submitted documents, we conclude that the department must withhold the remaining information, which we have marked, pursuant to section 552.101 of the Government Code in conjunction with section 81.046(b) of the Health and Safety Code.

To summarize: (1) the department must release information that specifically pertains exclusively to the individual who provided written authorization pursuant to section 81.046(c)(2) of the Health and Safety Code; and (2) the department must withhold the remaining information, which we have marked, under section 552.101 of the Government Code in conjunction with section 81.046(b) 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 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# 170674

Enc: Submitted documents

c: Ms. Guadalupe V. Trevino  
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(w/o enclosures)