ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 10, 2003

Mr. Jose R. Guerrero
Montalvo & Ramirez
900 North Main
McAllen, Texas 78501

OR2003-7202

Dear Mr. Guerrero:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 189164.

The City of San Benito (the "city"), which you represent, received a request for "health inspection report on [a specified business entity] and any other restaurants that have been closed down in the past few months or have received warnings because of non-compliance of health codes." You claim that the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

Initially, we note that the city did not submit any responsive information to us other than the responsive information pertaining to the specified business entity. We, therefore, presume that the city has already provided the requestor with all other responsive information to the extent that it existed at the time of the city's receipt of this request. If not, then the city must do so at this time. *See* Gov't Code §§ 552.006, .301, .302; *see also* Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

You claim that the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 81.046 of the Health and Safety Code.[1] Section 81.046 provides in pertinent part:

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[1] Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes.

> (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. After carefully reviewing your arguments and the submitted information, we find that the city has not adequately demonstrated, nor do the documents reflect, that the information was acquired or created during an investigation conducted under chapter 81. *See* Health & Safety Code § 81.061(b) (local health authority shall provide information pursuant to special investigation of specified cases of disease upon request of Texas Department of Health). Furthermore, you have not adequately demonstrated that the submitted information consists of reports, records, or information furnished to a health authority pursuant to the communicable disease reporting provisions of chapter 81 of the Health and Safety Code. *See* Health & Safety Code § 81.042 (physician shall report patient who is suspected of having communicable disease or health condition identified by Texas Board of Health as a reportable disease to local health authority). Accordingly, we conclude that the city may not withhold any portion of the submitted information pursuant to section 552.101 of the Government Code in conjunction with section 81.046 of the Health and Safety Code. Consequently, the city must release the entirety of the submitted information to the requestor.

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).

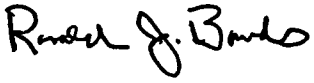
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Dep't of Pub. 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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 189164

Enc. Submitted documents

c: Mr. Pallavi Agarwal
c/o Jose R. Guerrero
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(w/o enclosures)