



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 25, 2004

Ms. Patricia Reedy  
Public Information Coordinator  
Texas Department of Health  
1100 West 49th Street  
Austin, Texas 78756-3199

OR2004-5229

Dear Ms. Reedy:

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# 204112.

The Texas Department of Health (the "department") received a request for any information "generated or accumulated regarding the Hepatitis A outbreak" at a specified location. 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.

Initially, you state that a portion of the submitted information is the same information that was the subject of a previous ruling from this office. In Open Records Letter No. 2004-3804 (2004), we concluded that the department was required to withhold the submitted information under section 552.101 in conjunction with section 81.046 of the Health and Safety Code. Therefore, assuming that the four criteria for a "previous determination" established by this office in Open Records Decision No. 673 (2001) have been met, we conclude that the department may rely on our decision in Open Records Letter No. 2004-3804 (2004) with respect to the information requested in this instance that was

previously ruled upon in that decision.<sup>1</sup> See Gov't Code § 552.301(f); Open Records Decision No. 673 (2001). To the extent that the information requested in this instance was not the subject of this prior ruling, we will address your argument for the information you have submitted.

Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. Section 81.046 of the Health & Safety Code provides in part:

(a) Reports, records, and information furnished to a health authority or the [Texas Department of Health] that relate to cases or suspected cases of diseases or health conditions are confidential and may be used only for purposes of [chapter 81 of the Health and Safety Code].

(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 Subsections (c) and (d).

Health & Safety Code § 81.046(a)-(b). This office has concluded that any information acquired or created during an investigation under chapter 81 of the Health and Safety Code is confidential and may not be released unless an exception set out in section 81.046 applies. See Open Records Decision No. 577 (1990). You assert that section 81.046 is applicable to the submitted information that is not encompassed by the prior ruling. You indicate that this information was furnished to or created or gathered by the department and relates to cases or suspected cases of diseases or health conditions. You also state that the submitted information does not fall within the exceptions for release set forth in section 81.046. Based on your representations, we conclude that the department must withhold the submitted information that is responsive to this request under section 552.101 of the Government Code in conjunction with section 81.046 of the Health and Safety Code.

In summary: (1) the department may continue to rely on Open Records Letter No. 2004-3804 (2004) with regard to the submitted information that is encompassed by the prior ruling; and (2) the submitted information that is not encompassed by the prior ruling is excepted from disclosure under section 552.101 in conjunction with section 81.046 of the

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<sup>1</sup> The four criteria for this type of "previous determination" are 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the attorney general's prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. See Open Records Decision No. 673 (2001).

Health and Safety Code. As we are able to make this determination, we need not address your other claim under section 552.101.

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,

A handwritten signature in black ink, appearing to read 'Debbie K. Lee', with a long horizontal flourish extending to the right.

Debbie K. Lee  
Assistant Attorney General  
Open Records Division

DKL/seg

Ref: ID# 204112

Enc. Submitted documents

c: Mr. Mike H. Bassett  
The Bassett Firm  
3838 Oak Lawn Avenue, Suite 1600  
Dallas, Texas 75219  
(w/o enclosures)