ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 14, 2005

Ms. Melanie Barton
Assistant District Attorney
Dallas County
411 Elm Street, 5th Floor
Dallas, Texas 75202

OR2005-11232

Dear Ms. Barton:

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# 238224.

The Dallas County Health and Human Services Department (the "department") received a request for information pertaining to an outbreak of Legionnaires' disease; however, the requestor also limited his request by allowing for the redaction of "medical information related to the individuals investigated[.]" You claim that the submitted 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.[1] We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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 part the following:

[1]We assume that, to the extent any additional responsive information existed when the department received the request for information, you have released it to the requestor. If not, then you must do so immediately. *See* Gov't Code §§ 552.006, 552.301, 552.302; Open Records Decision No. 664 (2000).

> (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 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 of the Health and Safety Code is confidential and may not be released unless an exception set out in the statute applies. You indicate that the submitted documents relate to an investigation conducted under chapter 81 and that section 81.046 prohibits the release of the information at issue. Based on your representations and our review of the information at issue, we thus agree that the submitted information is confidential under section 81.046.

Pursuant to subsection 81.046(c), the department may release medical or epidemiological information that is confidential under section 81.046 on the following grounds:

> (1) for statistical purposes if released in a manner that prevents the identification of any person;
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> (2) with the consent of each person identified in the information;
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> (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.

Health & Safety Code § 81.046(c). The requestor asserts that, because his request did not include "personal medical information," the department should release the submitted documents with this information redacted pursuant to subsection 81.046(c)(1). However, the requestor has not established that release of the requested information would be "for

statistical purposes." *See id.* § 81.046(c)(1). The department also informs us that subsection 81.046(c) "is not applicable to this request." Thus, we conclude that the requestor has not established he has a right of access to the submitted information pursuant to subsection 81.046. *See* ORD No. 577 at 3-4.

The requestor also asserts that, pursuant to *In re Perritt*, 973 S.W.2d 776 (Tex. App.—Texarkana 1998, orig. proceeding), the department may release the information at issue with confidential medical information redacted. The trial court in *Perritt* ordered disclosure of the names of participants in a Department of Health and the Center for Disease Control investigation of food poisoning conducted pursuant to section 81.046 "based on a perceived need in discovery, but ordered the defendants not to contact those disclosed individuals." *Perritt*, 973 S.W.2d at 779 n.3. However, release to the requestor in this instance would not be pursuant to discovery, nor is it otherwise authorized pursuant to section 81.046(c). Further, we note that *Perritt* specifically did not address whether the trial court had the authority to order release of the names of the participants in the study. *See id.* at 782 ("It is arguable that not even the names of the participants in the study should have been released because [section 81.046] clearly provides for absolute confidentiality"). Thus, we find that *Perritt* also does not provide the requestor a right of access to the submitted information.

The requestor also asserts that the department "has waived the protection offered by [section] 81.096" by releasing some of the information at issue to "non-governmental third parties." We note, however, that section 552.101 is a mandatory exception to disclosure that a governmental body may not waive. *See* Gov't Code §§ 552.007, .301, .302, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions). Thus, the department may not waive the confidentiality provisions of section 552.101 in conjunction with section 81.096. Accordingly, the department 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.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/seg

Ref: ID# 238224

Enc. Submitted documents

c: Mr. Scott P. Hazen
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(w/o enclosures)