



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 19, 2008

Ms. Myrna S. Reingold
Galveston County Legal Department
County Courthouse
722 Moody, 5th Floor
Galveston, Texas 77550-2317

OR2008-02250

Dear Ms. Reingold:

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# 302552.

The Galveston County Health District (the "district") received a request for certain information pertaining to lead paint exposure in and around the Galveston area. 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

Initially, we address your assertion that the district "does not have information responsive to the request" because "the information does not show that the presence of lead is attributable to lead paint exposure." We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). Likewise, a

¹We 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.

governmental body is not required to produce the responsive information in the format requested, a list, or create new information to respond to the request for information. *AT&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 676 (Tex.1995); *Fish v. Dallas Indep. Sch. Dist.*, 31 S.W.3d 678, 681(Tex. App.—Eastland 2000, pet. denied); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975). In this instance, the requestor asks for the “addresses and locations of lead paint exposures in and around Galveston” but does not request that such information be supplied in any particular format. You make no assertion that the submitted information does not contain the requested information. Instead, you state that the submitted results of venous blood draws do “not show what the presence of lead is attributable to” and you claim that these documents are excepted from disclosure. Upon review, we find that the submitted information is responsive to the instant request. Thus, while the district need not distill the requested information into the form of a list, it must nevertheless release the submitted information unless such information may or must be withheld pursuant to one of the Act’s exceptions to disclosure.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information protected by other statutes. Section 88.002 of the Health and Safety Code provides in pertinent part:

(a) Except as specifically authorized by this chapter, reports, records, and information furnished to a health authority, a regional director, or the department that relate to cases or suspected cases of children with blood lead levels of concern or lead poisoning 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 childhood lead poisoning and children with blood lead levels of concern are not public information under the open records law, Chapter 552, Government Code, and may not be released or made public on subpoena or otherwise except as provided by this chapter.

(c) Medical, epidemiological, or toxicological 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, health authorities, regional directors, and public officers of counties and

municipalities as necessary to comply with this chapter and related rules;

(4) to appropriate federal agencies, such as the Centers for Disease Control and Prevention of the United States Public Health Service, except that the information must be limited to the information requested by the agency; or

(5) to medical personnel to the extent necessary in a medical emergency to protect the health or life of the child identified in the information.

Health and Safety Code § 88.002(a), (b), (c). You indicate that the information at issue was furnished to the district and relates to cases or suspected cases of a child with blood lead levels of concern or lead poisoning. You state that none of the release provisions in section 88.002(c) apply in this instance. Based on your representations and our review of the submitted information, we conclude that the submitted information must be withheld from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 88.002 of the Health and Safety Code. As our ruling on this issue is dispositive, we need not address your remaining arguments against disclosure.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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,

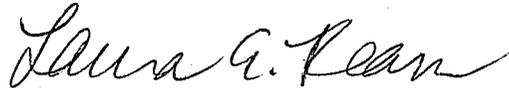
toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge 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,



Laura E. Ream
Assistant Attorney General
Open Records Division

LER/jb

Ref: ID# 302552

Enc. Submitted documents

c: Ms. Selaine Rollins
P.O. Box 103
Texas City, Texas 77592
(w/o enclosures)