



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 2, 2009

Mr. Marcus W. Norris
City Attorney
City of Amarillo
P.O. Box 1971
Amarillo, Texas 79105-1971

OR2009-01326

Dear Mr. Norris:

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# 333838.

The City of Amarillo (the "city") received two requests for data regarding a specific study regarding Methicillin-resistant Staphylococcus Aureus ("MRSA"). You claim that the requested information is not subject to the Act. Alternatively, you claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. Additionally, you state that the request may implicate the proprietary interests of third parties. You inform us, and provide documentation showing, that you have notified the interested third parties of the request and of their opportunity to submit comments to this office as to why the requested information should not be released.¹ See Gov't Code § 552.305(d); Open Records Decision No. 542 (statutory predecessor to section 552.305 allows a governmental body to rely on an interested third party to raise and explain the applicability of the exception to disclosure in certain circumstances). We have also received comments from the requestor. See Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released). We have

¹The interested third parties are Northwest Texas Healthcare System ("Northwest"), Baptist St. Anthony Health System ("St. Anthony"), and the U.S. V.A. Hospital (the "U.S. V.A.").

considered the submitted arguments and reviewed the submitted representative sample of information.²

Initially, the city asserts that the requested information is not subject to the Act. The Act is applicable to "public information." See Gov't Code § 552.021. Section 552.002 of the Act provides that "public information" consists of "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." *Id.* § 552.002(a). Thus, virtually all information that is in a governmental body's physical possession constitutes public information that is subject to the Act. *Id.* § 552.002(a)(1); see also Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). Under this provision, information is generally "public information" within the scope of the Act when it relates to the official business of a governmental body or is maintained by a public official or employee in the performance of official duties, even though it may be in the possession of one person. See Open Records Decision No. 635 at 4 (1995). In addition, section 552.001 states it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees. See Gov't Code § 552.001(a).

The city argues that the requested information is not "public information" under the Act because the study at issue was a "purely private initiative by the [third parties], conducted for their own benefit" and that none of the third parties are entities subject to the Act. However, the requested information is in the possession of the city, which is a governmental body as defined by section 552.003. You also acknowledge that "it is undisputed the city health director and health authority have access to the study." Having considered your arguments and reviewed the documents at issue, we find that the submitted information is maintained in connection with the transaction of official business by or for the city. Therefore, we conclude that the requested information is subject to the Act and must be released, unless the city demonstrates that the information falls within an exception to public disclosure under the Act.

Next, we note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. See Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Northwest, St. Anthony, or U.S. V.A. explaining why the requested

²We 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.

information should not be released. Thus, these entities have not demonstrated that any of their information is proprietary for purposes of the Act. *See id.* § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would result from disclosure); Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Accordingly, we conclude that the city may not withhold any portion of the requested information on the basis of any proprietary interests that these entities may have in the information.

The city also raises section 552.101 of the Government Code in conjunction with section 81.046 of the Health and Safety Code. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information protected by statute. Gov't Code § 552.101. Chapter 81 of the Health and Safety Code codifies the Communicable Disease Prevention and Control Act. 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 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 it is subject to an exception set out in the statute. Thus, section 81.046 is only applicable to records relating to cases or suspected cases of diseases or health conditions. In this case, however, the information at issue consists of evaluations of pre-operation testing for MRSA in knee surgery patients and the effectiveness of intervention. You state this information was only forwarded to the city's health authority in order to receive advice on the study, to benefit from his professional expertise, and to gain insight into the evaluation of the collected data. In this instance, you have failed to explain that the information at issue was provided to the city pursuant to the reporting requirements in chapter 81 of the Health and Safety Code. We further note that MRSA does not constitute a "notifiable condition" or "reportable disease" for purposes of chapter 81 of the Health and Safety Code. *See* 25 TAC §§ 97.3(a)(2) (stating that vancomycin-intermediate resistant *Staphylococcus aureus* (VISA) and vancomycin-resistant *Staphylococcus aureus* (VRSA) must be reported), 97.1(15) (defining "notifiable condition"

and "reportable disease" for purposes of the Texas Health and Safety Code). Accordingly, we conclude that you have failed to establish that the requested information is confidential under section 81.046 of the Health and Safety Code, and the city may not withhold this information under section 552.101 of the Government Code. As you raise no further arguments against disclosure, the requested information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/cc

Ref: ID# 333838

Enc. Submitted documents

cc: Requestor
(w/o enclosures)