



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 2, 2009

Mr. David M. Swope  
Assistant County Attorney  
Harris County  
1019 Congress, 15<sup>th</sup> Floor  
Houston, Texas 77002

OR2009-12143A

Dear Mr. Swope:

This office issued Open Records Letter No. 2009-12143 (2009) on August 28, 2009. We have examined this ruling and determined that we made an error. Where this office determines that an error was made in the decision process under sections 552.301 and 552.306, and that error resulted in an incorrect decision, we will correct the previously issued ruling. *See generally* Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act"), chapter 552 of the Government Code). Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on August 28, 2009.

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# 355671 (Harris County C.A. File No. 09GEN1037).

The Harris County Public Health and Environmental Services ("HCPHES") received a request for records pertaining to a salmonella outbreak during a specified time period. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information, a portion of which consists of a representative sample.<sup>1</sup>

<sup>1</sup>We 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.

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. Section 552.101 encompasses information made confidential by other statutes, like section 81.046 of the Health and Safety Code, which provides in part:

(a) Reports, records, and information received from any source, including from a federal agency or from another state, furnished to a public health district, a health authority, a local health department, or the [Texas Department of State Health Services] 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 [the Act], and may not be released or made public on subpoena or otherwise except as provided by Subsections (c), (d), and (f).

Act of May 1, 1995, 74<sup>th</sup> Leg., R.S., ch. 76, § 5.95(90), 1995 Tex. Gen. Laws 458, 553, *amended by* Act of May 31, 2009, 81<sup>st</sup> Leg., R.S., S.B. 1171, § 1 (to be codified as an amendment of TEX. HEALTH & SAFETY CODE § 81.046(a)). 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 information was gathered or created during investigations conducted by HCPHES pursuant to the provisions of chapter 81; thus, we agree that section 81.046(b) governs the release of this information. You state that none of the release provisions of section 81.046 are applicable in this instance. Accordingly, based upon your representations and our review of the submitted information, we agree that the HCPHES 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.<sup>2</sup>

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.

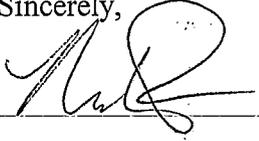
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure.

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787. under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Nneka Kanu  
Assistant Attorney General  
Open Records Division

NK/eeg

Ref: ID# 355671

cc: Requestor  
(w/o enclosures)