



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 24, 2009

Mr. Monty Waters
Assistant General Counsel
Department of State Health Services
P.O. Box 149347
Austin, Texas 78714-9347

OR2009-16737

Dear Mr. Waters:

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# 362300.

The Department of State Health Services (the "department") received a request for information relating to water quality testing for a specified location. You state that some of the responsive information has been or will be made available to the requestor. You state the department does not have some of the requested information.¹ You claim 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.

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. You raise section 552.101 in conjunction with section 81.046 of the Health and Safety Code. Section 81.046, as recently amended, 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 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,

¹We note the Act does not require a governmental body to release information that did not exist at the time the request for information was received or create new information in response to a request. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W. 2d 266 (Tex. Civ. App. – San Antonio 1978, writ dismissed).

Government Code, and may not be released or made public on subpoena or otherwise except as provided by Subsections (c), (d), and (f).

(c) Medical or epidemiological 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 treating the individual, appropriate state agencies in this state or another state, a health authority or local health department in this state or another state, or federal, county, or district courts to comply with this chapter and related rules relating to the control and treatment of communicable diseases and health conditions or under another state or federal law that expressly authorizes the disclosure of this information;

(4) to appropriate federal agencies, such as the Centers for Disease Control and Prevention 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.

(d) In a case of sexually transmitted disease involving a minor under 13 years of age, information may not be released, except that the child's name, age, and address and the name of the disease may be released to appropriate agents as required by Chapter 261, Family Code. If that information is required in a court proceeding involving child abuse, the information shall be disclosed in camera.

...

(f) Reports, records, and information relating to cases or suspected cases of diseases or health conditions may be released to the extent necessary during a public health disaster to law enforcement personnel solely for the purpose of protecting the health or life of the person identified in the report, record, or information. Only the minimum necessary information may be released

under this subsection, as determined by the health authority, the local health department, or the department.

Health & Safety Code § 81.046(a)-(d), (f). 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 state that the submitted information was either furnished to or created or gathered by the department and is related to cases or suspected cases of diseases or health conditions. Based on your representations and our review of the information at issue, we conclude that the submitted information is confidential under section 81.046 of the Health and Safety Code.

You also contend that the submitted information does not fall within any of the exceptions for release of information under section 81.046(c). However, you acknowledge that the requestor has submitted a copy of an "Authorization for the Use and Disclosure of Protected Health Information," addressed to the department and signed by the personal representative of the deceased individual who is the subject of the submitted records. In addition, the requestor has submitted Letters of Administration confirming the appointment of the personal representative as the administrator of the deceased's estate. We note that section 81.046(c) provides for the release of "[m]edical or epidemiological information . . . with the consent of each person identified in the information[.]" *Id.* § 81.046(c)(2). As the requestor has submitted authorization for the release of the deceased's medical information, the department must release such information in the submitted records regarding the deceased individual to the requestor. The department must withhold any remaining information under section 552.101 of the Government Code in conjunction with section 81.046 of the Health and Safety Code.

You also ask this office to issue a previous determination that would permit the department to withhold information under section 81.046 of the Health and Safety Code without the necessity of requesting a decision by this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (previous determinations). We decline to issue such a decision at this time. 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, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Pam Wissemann".

Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/jb

Ref: ID# 362300

Enc. Submitted documents

c: Requestor
(w/o enclosures)