



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 22, 2011

Ms. Cary Grace
Assistant City Attorney
Law Department
City of Austin
P.O. Box 1088
Austin, Texas 78767

OR2011-02588

Dear Ms. Grace:

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# 409706.

The City of Austin's Health and Human Services Department (the "department") received a request for the case file related to a specified investigation. 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. 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).

(c) Medical or epidemiological information may be released:

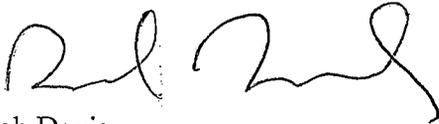
...
(2) with the consent of each person identified in the information[.]

Health & Safety Code § 81.046(a), (b), (c)(2). 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 the submitted information was acquired or created during an investigation conducted by the department pursuant to the provisions of chapter 81; thus, we agree that section 81.046 governs the release of this information. The exceptions to confidentiality in sections 81.046(d) and 81.046(f) are not applicable in this instance. However, in this instance the requestor states he represents the individuals who are the subject of the submitted information. *See* Health & Safety Code § 81.046(c)(2). In Open Records Decision No. 577, this office also concluded that although subsection 81.046(c)(2) uses the permissive term “may,” this subsection must be read together with the statutory predecessor to section 552.023 of the Government Code. *See* ORD 577 at 3. Under the statutory predecessor to section 552.023, a person’s representative has a special right of access to information which is withheld from disclosure to the general public pursuant to laws intended to protect that person’s privacy interests. *See* Gov’t Code § 552.023. This office concluded that the conditions placed on the release of medical or epidemiological information in section 81.046 are designed to protect individual privacy, since this information may be released if each person identified in the information gives consent. *See* ORD 577 at 3. Thus, section 81.046(c)(2), when read together with the statutory predecessor to section 552.023, required the Hidalgo county health department to release to a requestor any medical or epidemiological information it had concerning an individual who consented to the release. *See id.* Therefore, we find that if the department receives proper consent from the requestor’s clients under section 81.046(c)(2), then the requestor has a right of access under that section to his client’s medical or epidemiological information and it must be released to him. In that case, the department must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 81.046 of the Health and Safety Code. If the department does not receive proper consent, then it must withhold the submitted information in its entirety under section 552.101 in conjunction with section 81.046.

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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/tf

Ref: ID# 409706

Enc. Submitted documents

c: Requestor
(w/o enclosures)