



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 4, 2013

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

OR2013-03609

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# 480371 (DSHS File: 21126/2012).

The Texas Department of State Health Services (the "department") received two requests from the same requestor for drug overdose data collected by the department's regional poison control centers for all years available. 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. We have also considered comments submitted by the requestor. See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, the requestor asserts the department withheld information responsive to a request for information he submitted to the department on January 8, 2013. We note the department responded to this request in a letter dated January 23, 2012. In its response, the department states it does not possess information responsive to the request. The Act does not require a governmental body to release information that did not exist when it received a request or to create responsive information. See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983). Whether the department has information responsive to the January 8, 2013 request, is a question of fact. This office cannot resolve factual disputes in the opinion process. See Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Where fact issues are not resolvable as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our decision, or upon those facts that are discernible from the documents

submitted for our inspection. *See* ORD 552 at 4. Accordingly, we must accept the department's representation it has no responsive information that it has not already provided to this office. We note a governmental body has a duty to make a good-faith effort to relate a request for information to information that the governmental body holds. *See* Open Records Decision No. 561 at 8-9 (1990). We assume the department has made a good-faith effort to do so. Thus, we will consider the department's argument against release of 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 161.044(b) of the Health and Safety Code. Section 161.044 provides:

(a) The department shall maintain a central repository for the collection and analysis of information relating to incidents of a controlled substance overdose for which a physician or other person is required to report to the department under Section 161.042. The department may not include in the repository any information the physician or other person is precluded from reporting under that section.

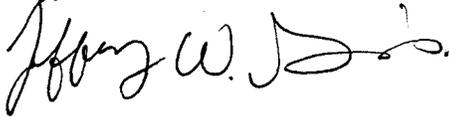
(b) The department shall release statistical information contained in the central repository on the request of a medical professional or representative of a law enforcement agency.

Health & Safety Code § 161.044. You argue section 161.044(b) makes confidential the statistical information contained in the department's central repository to anyone other than a medical professional or representative of a law enforcement agency. We note, however, section 552.101 only excepts information from disclosure where the express language of a statute makes certain information confidential or states that information shall not be released to the public. *See* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express, and confidentiality requirement will not be implied from statutory structure), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to public). The plain language of section 161.044 requires the department to release statistical information contained in the central repository on the request of a medical professional or representative of a law enforcement agency. This section does not expressly make any information confidential. Further, we note information cannot be withheld from public disclosure by negative implication simply because a statute designates other specific information as subject to release. Open Records Decision No. 525 at 4 (1989). Accordingly, the department may not withhold the submitted information under section 552.101 of the Government Code on the basis of section 161.044(b) of the Health and Safety Code. As you raise no other exceptions to disclosure, the submitted 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](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 black ink, appearing to read "Jeffrey W. Giles". The signature is fluid and cursive, with a large initial "J" and "G".

Jeffrey W. Giles  
Assistant Attorney General  
Open Records Division

JWG/dls

Ref: ID# 480371

Enc. Submitted documents

c: Requestor  
(w/o enclosures)