



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 3, 2014

Ms. Cheryl Elliott Thornton
Assistant County Attorney
Harris County
1019 Congress Avenue, 15th Floor
Houston, Texas 77002

OR2014-00224

Dear Ms. Thornton:

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# 510331 (CAO File No. 13PIA0565).

The Harris County Public Health and Environmental Services (the "county") received a request for seven categories of information related to the requestor's clients and a specified outbreak of *Cyclospora*. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor seeks information related to four separate individuals. However, the submitted information pertains to only two of the four specified individuals. Therefore, to the extent information responsive to the remainder of the request exists, we assume you have released it to the requestor. If you have not, you must do so at this time. *See* Gov't Code §§ 552.301, .302.

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 section 81.046 of the Health and Safety Code, which provides, in relevant part, as follows:

(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 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. *See* ORD 577; Health & Safety Code § 81.046(b)-(d), (f). You indicate the submitted information was furnished to or gathered by the county in relation to cases or suspected cases of a Cyclospora outbreak. Based on your representations and our review, we agree the submitted information is subject to section 81.046 of the Health and Safety Code. We find the exceptions to confidentiality in subsections 81.046(d) and (f) are not applicable in this instance.

However, the requestor is the legal representative of the individuals identified in the information at issue and is requesting the information on their behalf. In Open Records Decision No. 577, this office concluded section 81.046(c)(2), when read together with the statutory predecessor to section 552.023 of the Government Code, requires a county health department to release to a requestor any medical or epidemiological information it has concerning an individual who has consented to the release. ORD 577 at 4-5; *see* Health & Safety Code § 81.046(c)(2); Gov't Code § 552.023. We note the requestor has provided written authorizations from the individuals listed in the request. The requestor claims the consent forms comply with the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 42 U.S.C. §§ 1320(d)-1320d-8. In this instance, however, section 81.046(c) of the Health and Safety Code, not HIPAA, governs the release of this information. As this office is unable to make a determination on the validity of the consent provided, we must rule conditionally. Thus, if the county receives proper consent from the requestor under section 81.046(c)(2), then the requestor generally has a right of access under that section to the medical or epidemiological information that pertains to the requestor's

clients and that information must generally be released to him pursuant to section 552.101 of the Government Code in conjunction with section 81.046(c)(2) of the Health and Safety Code. If the county does not receive the proper consent from the requestor under section 81.046(c)(2), then it must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with subsections 81.046(a)-(b) of the Health and Safety Code.

Although you contend the information at issue is excepted from disclosure under section 552.103 of the Government Code, we note a statute governing the release of specific information prevails over the exceptions to disclosure found in the Act. Attorney General Opinion DM-146 at 4-5 (1992); *see also* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 at 4 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act).

We note some of the submitted information consists of medical records of the requestor's clients that is subject to the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 552.101 of the Government Code also encompasses the MPA. Section 159.002 of the MPA provides, in part, as follows:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

Occ. Code § 159.002(a)-(b). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004; Open Records Decision No. 598 (1991). This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). This office has also found that when a file is created as the result of a hospital stay, all the documents in the file relating to diagnosis and treatment constitute physician-patient communications or "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician." Open Records Decision No. 546 (1990). Upon review, we find the submitted information contains medical records of two of the requestor's clients. Accordingly, the county must generally withhold this information under section 552.101 of the Government Code in conjunction with the MPA.

However, the medical records subject to the MPA also contain medical or epidemiological information subject to the release provision of section 81.046(c)(2) of the Health and Safety Code. Thus, if the county receives the proper consent from the requestor under section 81.046(c)(2), there is a conflict between the release provided by section 81.046(c)(2) and the confidentiality of the medical records under the MPA. Where information falls within both a general and a specific statutory provision, the specific provision prevails over the general provision, unless the general provision was enacted later and there is clear evidence the legislature intended the general provision to prevail. *See* Gov't Code § 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision); *Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones). The MPA is a more specific statute than section 81.046 of the Health and Safety Code because the MPA applies specifically to medical records while section 81.046 applies generally to all records created as part of an investigation into cases of disease or health conditions. Although the release provisions in section 81.046 were later enacted, there is no indication the legislature intended section 81.046 to prevail over the MPA.¹ Therefore, the county must withhold the marked medical records under section 552.101 of the Government Code in conjunction with the MPA.

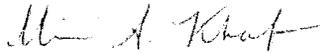
In summary, the county must withhold the marked medical records under section 552.101 of the Government Code in conjunction with the MPA. If the county receives proper consent from the requestor under section 81.046(c)(2) of the Health and Safety Code, then the remaining medical or epidemiological information pertaining to the requestor's clients must be released. If the county does not receive the proper consent from the requestor under section 81.046(c)(2), then the county must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with subsections 81.046(a)-(b) of the Health and Safety Code.

You also ask this office to issue a previous determination that would permit the county to withhold information under section 81.046 of the Health and Safety Code without the necessity of requesting a decision from 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. Accordingly, 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.

¹*See* Act of August 5, 1981, 67th Leg., 1st C.S., ch. 1, § 1, 1981 Tex. Gen. Laws 1, 31 (enacting MPA); Act of June 2, 1987, 70th Leg., R.S., ch. 543, § 10, 1987 Tex. Gen. Laws 2176, 2180-81 (enacting statutory predecessor to Health and Safety Code § 81.046(c)(2)).

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Miriam A. Khalifa
Assistant Attorney General
Open Records Division

MAK/akg

Ref: ID# 510331

Enc. Submitted documents

c: Requestor
(w/o enclosures)