



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 7, 2014

Ms. Melanie Barton
Assistant District Attorney
Dallas County District Attorney's Office
411 Elm Street, Fifth Floor
Dallas, Texas 75202

OR2014-00406

Dear Ms. Barton:

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# 510194.

The Dallas County Health and Human Services Department (the "department") received a request for all notes and investigation materials regarding the requestor's client and any specified types of outbreaks. 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, such as 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 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 state the submitted information was furnished to or created by the department during an investigation, and indicate the investigation pertained to a salmonella outbreak. Based on your representations and our review, we agree the submitted information is subject to section 81.046. The exceptions to confidentiality in subsections 81.046(d) and 81.046(f) are not applicable in this instance.

However, the requestor is the legal representative of the individual identified in the information at issue and is asking for the information on the client's behalf. *See* Health & Safety Code § 81.046(c)(2). 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 3. Along with the request for information, the requestor has submitted to the department an authorization of the release of medical records signed by the requestor's client. Therefore, the requestor has a right of access under section 81.046(c)(2) to the medical or epidemiological information pertaining to his client, and that information must generally be released to him pursuant to section 81.046(c)(2) of the Health and Safety Code.

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

(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). We have also found 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). Accordingly, the department must generally withhold the medical record of the requestor’s client, which we have marked, under section 552.101 in conjunction with the MPA.

However, the medical record subject to the MPA also contains medical or epidemiological information subject to the release provision of section 81.046(c)(2) of the Health and Safety Code. Because the department has received consent 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 that 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 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 diseases or health conditions. Although the release provisions in section 81.046 were later enacted, we have no indication the legislature intended section 81.046 to prevail over the MPA.¹ Therefore, the department must withhold the marked medical record under section 552.101 in conjunction with the MPA.

In summary, the department must withhold the medical record we have marked under section 552.101 of the Government Code in conjunction with the MPA. The medical or epidemiological information pertaining to the requestor’s client in the remaining information must be released to the requestor under section 552.101 of the Government Code in

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 & Safety Code § 81.046(c)(2)).

conjunction with section 81.046(c)(2) of the Health and Safety Code.² Any remaining information must be withheld under section 552.101 of the Government Code in conjunction with section 81.046 of the Health and Safety Code.

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.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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/tch

Ref: ID# 510194

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the information being released in this instance is confidential with respect to the general public. See Health & Safety Code § 81.046(c)(2). Therefore, if the department receives another request for this information from an individual other than this requestor or his client, the department must again seek a ruling from this office.