



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 20, 2014

Mr. Richard Hamala  
Counsel for the Williamson County and Cities Health District  
Tiemann, Shahady & Hamala, P.C.  
102 North Railroad Avenue  
Pflugerville, Texas 78660

OR2014-08605

Dear Mr. Hamala:

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# 523230.

The Williamson County and Cities Health District (the "district"), which you represent, received a request for a complete list of all current investigations being conducted by the district. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information, a portion of which constitutes a representative sample.<sup>1</sup>

Initially, we must address the district's obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b) of the Government Code, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. Gov't Code § 552.301(b). While you raised sections 552.103 and 552.108 of the Government Code, as well as section 552.101 of the Government Code in conjunction with sections 81.046, 161.0213, and 181.006 of the Health and Safety Code and the Health

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<sup>1</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Insurance Portability and Accountability Act of 1996 ("HIPAA"), within the ten-business-day time period as required by section 552.301(b), you did not raise section 552.101 of the Government Code in conjunction with the common-law informer's privilege until after the ten-business-day deadline had passed. Consequently, we find the district failed to comply with the procedural requirements of section 552.301(b) of the Government Code with respect to its claim under 552.101 of the Government Code in conjunction with the common-law informer's privilege.

Generally, a governmental body's failure to comply with section 552.301 results in the waiver of its untimely claim, unless that claim is a compelling reason for withholding information from disclosure. *See generally id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also generally* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). You seek to withhold the portions of the information you have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The purpose of the common-law informer's privilege is to protect the flow of information to a governmental body, rather than to protect a third person. Thus, the informer's privilege, unlike other claims under section 552.101, may be waived. *See* Open Records Decision No. 549 at 6 (1990). Therefore, the district's assertion of the informer's privilege does not provide a compelling reason for non-disclosure under section 552.302, and the district may not withhold any portion of the information at issue under section 552.101 on that basis. However, we will consider the applicability of your timely raised exceptions to disclosure.

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 other statutes make confidential. You claim section 552.101 in conjunction with 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).

Health & Safety Code § 81.046(a)-(b). 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 id.* § 81.046(b)-(d), (f); ORD 577. We understand the district acquired the information you have marked in the course of investigating suspected cases of health conditions involving notifiable conditions pursuant to section 81.041 of the Health and Safety Code. *See* Health & Safety Code § 81.041 (requiring the creation and maintenance of a list of reportable communicable diseases or health conditions by the Texas Board of Health). Based on your representations and our review of the information at issue, we find the information you have marked falls within the scope of section 81.046(b). It does not appear that any of the release provisions of section 81.046 are applicable in this instance. We therefore conclude the district must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 81.046 of the Health and Safety Code.<sup>2</sup>

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) must reasonably explain how and why release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us the district is an authorized agent of the Texas Commission on Environmental Quality (the “commission”) and is charged with enforcing rules promulgated by the commission pursuant to chapter 366 of the Health & Safety Code. *See* Health & Safety Code § 366.011 (commission or authorized agents have general authority over the location, design, construction, installation, and proper functioning of on-site sewage disposal systems and authority to administer chapter 366 and rules adopted pursuant to that chapter), .031 (commission shall designate authorized agent if certain criteria are met); 30 T.A.C. § 285.10 (delegation of authorized agent). You state enforcement action under these rules may include civil or criminal penalties. *See* 30 T.A.C. § 285.71. You further state the district may investigate non-compliance with the Texas Food Establishment rules and may impose administrative penalties for violations of these rules. *See* Health & Safety Code § 437.0185. You further state the violation of some of these rules may result in criminal penalties. *See id.* § 437.016 (operation of a specified establishment without a required permit is a misdemeanor offense). Finally, you state the district is responsible for the investigation of complaints of alleged violations of section 341.012 of the Health and Safety Code made to the district. *See id.* § 341.012 (governing the abatement of public health nuisances). You explain the district has the authority to investigate and enforce the law at issue and you state violations of section 341.012 carry both civil and criminal penalties. *See id.* §§ 341.091, .092. In addition, you state the district can refer violations of any of these regulations to the

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

appropriate city attorney or the Williamson County Attorney for prosecution. Therefore, we conclude the district is a law enforcement agency for purposes of section 552.108 of the Government Code.

You state the information you have marked relates to pending investigations of possible violations of the above-mentioned regulations. You argue release of the information you have marked would interfere with the district's detection, investigation, or prosecution of public health violations. Based upon your representations and our review, we conclude that the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d. Accordingly, the district may withhold the information you have marked from disclosure based on section 552.108(a)(1) of the Government Code.<sup>3</sup>

In summary, the district must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 81.046 of the Health and Safety Code. The district may withhold the information you have marked under section 552.108(a)(1) of the Government 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](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,



Tim Neal  
Assistant Attorney General  
Open Records Division

TN/bhf

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<sup>3</sup>As our ruling for this information is dispositive, we need not address your remaining arguments against its disclosure.

Ref: ID# 523230

Enc. Submitted documents

c: Requestor  
(w/o enclosures)