ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 15, 2014

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

OR2014-14372

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# 532926.

The Dallas County Health and Human Services Department (the "department") received a request for information pertaining to any investigation of actual or suspected exposure of the requestor's client to a specified disease for a specified time period. 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 and relates to the department's investigation into an exposure of listeria monocytogenes, which constitutes a reportable disease under chapter 81. 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, you state the requestor is the legal representative of the individual identified in the information at issue. *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. In this instance, the submitted documents do not reveal the requestor has obtained an authorization for the release of medical information from his client. Therefore, we are unable to determine whether the requestor has a right of access under section 81.046(c)(2) of the Health and Safety Code to the medical or epidemiological information pertaining to his client. Accordingly, we must rule conditionally. If the department does not receive consent under section 81.046(c)(2), then the department must withhold the submitted information in its entirety pursuant to section 552.101 in conjunction with section 81.046. However, if the department receives proper consent from the requestor under section 81.046(c)(2), then the medical or epidemiological information that pertains to the requestor's client must generally be released. *See* Health & Safety Code § 81.046(c)(2) (providing medical or epidemiological information may be released with consent of each person identified in the information); *see also* ORD 577 (concluding section 81.046 permits health department to provide requestor with medical or epidemiological information concerning person who signed release or any member of her family for whom she had right to give consent). In that instance, the

department must withhold any remaining information under section 552.101 in conjunction with section 81.046.

You also raise section 552.101 of the Government Code in conjunction with the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code for the medical records of the requestor's client. 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 records of the requestor's client, which we have marked, under section 552.101 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. If the department receives 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, if the department receives consent under section 81.046(c)(2), the department must withhold the marked medical records under section 552.101 in conjunction with the MPA.

In summary, if the department does not receive consent under section 81.046(c)(2) of the Health and Safety Code, then the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 81.046 of the Health and Safety Code. If the department receives consent under section 81.046(c)(2) of the Health and Safety Code, then the department must (1) withhold the marked medical records under section 552.101 of the Government Code in conjunction with the MPA, (2) release to this requestor the medical or epidemiological information in the remaining information pertaining to the requestor's client pursuant to section 81.046(c)(2) of the Health and Safety Code, and (3) withhold any remaining information 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/akg

---

[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)).

Ref: ID# 532926

Enc. Submitted documents

c: Requestor
(w/o enclosures)