



January 7, 2015

Ms. Lacey B. Lucas
Assistant District Attorney
Dallas County
411 Elm Street, 5th Floor
Dallas, Texas 75202-3317

OR2015-00197

Dear Ms. Lucas:

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# 549481.

The Dallas County Health and Human Services Department ("department") received a request for all e-mails and memoranda to and from Dallas County employees and elected leaders involving a specified Ebola case and patient during a specified period of time. The department states it will release some of the requested information. The department claims the submitted information is excepted from disclosure under sections 552.101, 552.107, and 552.111 of the Government Code.¹ Additionally, the department notified the City of Dallas, the Centers for Disease Control, and the Texas Department of State Health Services of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.304 (interested party may submit written comments to this office stating why information should or should not be released). We have considered the exceptions the department claims and reviewed the submitted representative sample of information.²

¹Although the department raises Texas Rule of Evidence 503, the proper exception to raise when asserting the attorney-client privilege for information not subject to section 552.022 of the Government Code is section 552.107 of the Government Code.

²We 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 those records contain substantially different types of information than that submitted to this office.

We note the information we have marked is not responsive to the instant request for information because it was not created within the time period specified or was created after the request for information was received. This ruling does not address the public availability of non-responsive information, and the department is not required to release non-responsive information in response to this request.

We note some of the responsive information may have been the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2014-23041 (2014), 2014-23231 (2014), and 2014-23277 (2014). There is no indication the law, facts, and circumstances on which the prior rulings were based have changed. Accordingly, for the responsive information that is identical to the information previously requested and ruled upon by this office, we conclude the department must continue to rely on Open Records Letter Nos. 2014-23041, 2014-23231, and 2014-23277 as previous determinations and withhold or release the identical information in accordance with those rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). To the extent the responsive information is not encompassed by the previous rulings, we will consider the submitted arguments against its 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 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 [DSHS] 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 that 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. The department states the submitted responsive information was furnished to or created by the department during an investigation under chapter 81 of an Ebola virus outbreak. Based on the department’s representations and our review, we agree section 81.046 governs the release

of the submitted responsive information. None of the release provisions of section 81.046 appear to be applicable. Accordingly, we determine the department must withhold the submitted responsive information under section 552.101 of the Government Code in conjunction with section 81.046 of the Health and Safety Code.³

In summary, the department must continue to rely on Open Records Letter Nos. 2014-23041, 2014-23231, and 2014-23277 as previous determinations and withhold or release the identical information responsive to the instant request in accordance with those rulings. To the extent the submitted responsive information is not encompassed by the previous rulings, the department must withhold it 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,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/akg

Ref: ID# 549481

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³As our ruling is dispositive, we need not address the department's remaining arguments against disclosure.

Mr. Warren M.S. Ernst
Dallas City Attorney
City of Dallas
1500 Marilla Street, Room 7DN
Dallas, Texas 75201-6622
(w/o enclosures)

Mr. David Lakey
Texas Department of State Health Services
P.O. Box 149347
Austin, Texas 78714
(w/o enclosures)

Mr. David Daigle
Centers for Disease Control
1600 Clifton Road
Atlanta, Georgia 30333
(w/o enclosures)