



January 9, 2015

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

OR2015-00437

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# 549477.

Dallas County Health and Human Services ("DCHHS") received a request for e-mails to or from a named DCHHS employee containing certain terms during a specified period of time. You state DCHHS will release some of the requested information.¹ You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, you notified the City of Dallas, the Texas Department of State Health Services, and the United States Centers for Disease Control of the request for information and of their right to submit written comments to this office stating why the submitted information should or should not be released. *See* Gov't Code 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from the Texas Department of State Health Services. We have considered the submitted arguments and reviewed the submitted representative sample of information.²

Initially, we note some of the requested information may have been the subject of previous requests for information, as a result of which this office issued Open Records Letter

¹We note DCHHS sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request).

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.

Nos. 2014-23041 (2014), 2014-23231 (2014), 2014-23277 (2014), 2015-00197 (2015), 2015-00210 (2015), 2015-00212 (2015), 2015-00220 (2015), and 2015-00395 (2015). We have no indication there has been any change in the law, facts, or circumstances on which the previous rulings were based. Accordingly, to the extent the submitted information is identical to the information previously requested and ruled upon by this office, we conclude DCHHS must rely on Open Records Letter Nos. 2014-23041, 2014-23231, 2014-23277, 2015-00197, 2015-00210, 2015-00212, 2015-00220, and 2015-00395 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 that information is or is not excepted from disclosure). To the extent the submitted information is not encompassed by the previous rulings, we will consider the submitted arguments against its disclosure.

Next, we note the Texas Department of State Health Services relies upon a previous determination issued by our office in Open Records Letter No. 2010-18849 (2010) as the basis for withholding the information submitted by DCHHS. In that ruling, we determined, in part, the Texas Department of State Health Services may withhold information subject to section 81.046 of the Health and Safety Code without the necessity of requesting a decision from this office. We note Open Records Letter No. 2010-18849 only applies to the Texas Department of State Health Services. Accordingly, Open Records Letter No. 2010-18849 does not authorize DCHHS to withhold information subject to section 81.046 without requesting a ruling from this office. *See* ORD 673 (listing elements of second type of previous determination under section 552.301(a) of the Government Code). Thus, DCHHS may not rely on Open Records Letter No. 2010-18849 as a basis for withholding any of 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 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). You state the submitted information was furnished to or created by DCHHS during an investigation under chapter 81 of an Ebola virus outbreak. Based on your representations and our review, we agree section 81.046 governs the release of portions of the submitted information. None of the release provisions of section 81.046 appears to be applicable. Accordingly, we determine DCHHS must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 81.046 of the Health and Safety Code. However, we find none of the remaining information consists of reports, records, and information that relate to cases or suspected cases of diseases or health conditions for purposes of section 81.046. Accordingly, DCHHS may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 81.046 of the Health and Safety Code.

Some of the remaining information may be subject to section 552.117 of the Government Code.³ Section 552.117(a)(1) excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). We note section 552.117 is also applicable to personal cellular telephone numbers and home facsimile numbers, provided the cellular telephone service and facsimile number is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. Therefore, if the individual whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, DCHHS must withhold the cellular telephone number we have marked under section 552.117(a)(1) of the Government Code, if a governmental body does not pay for the cellular telephone service. However, if the individual at issue did not timely request confidentiality under section 552.024 or a governmental body pays for the cellular telephone service, DCHHS may not withhold the cellular telephone number we have marked under section 552.117(a)(1).

In summary, to the extent the submitted information is identical to the information previously requested and ruled upon by this office, we conclude DCHHS must rely on Open Records

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Letter Nos. 2014-23041, 2014-23231, 2014-23277, 2015-00197, 2015-00210, 2015-00212, 2015-00220, and 2015-00395 as previous determinations and withhold or release the identical information in accordance with those rulings. To the extent the submitted responsive information is not encompassed by the previous rulings, DCHHS must (1) withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 81.046 of the Health and Safety Code; (2) withhold the cellular telephone number we have marked, if the individual at issue timely requested confidentiality under section 552.024 of the Government Code and a governmental body does not pay for the cellular telephone service; and (3) release the remaining information.

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,



Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/akg

Ref: ID# 549477

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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