



January 16, 2015

Mr. David Timberger
Director
General Law Division
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

OR2015-00940

Dear Mr. Timberger:

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# 550427 (TCEQ PIR Nos. 14-19030 and 14-19052).

The Texas Commission on Environmental Quality (the "commission") received a request for photographs from the cleanup of properties rented or owned by identified Ebola patients and any documents related to the cleanup of those properties. The commission received a second request for all information regarding the Ebola virus disease requested by and/or provided to named news organizations. You state you have released some information to the requestors. You state the commission does not have responsive information regarding one of the patients identified in the first request.¹ You claim the remaining requested information is excepted from disclosure under sections 552.101, 552.107, and 552.111 of the Government Code. You state release of the remaining requested information may implicate the proprietary and privacy interests of a third party. Accordingly, you state, and provide documentation showing, you notified Stericycle of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances).

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

We have considered the exceptions you claim and reviewed the submitted information, some of which consists of a representative sample.²

You inform us some of the requested information was the subject of two previous requests for information, as a result of which this office issued Open Records Letter Nos. 2014-23518 (2014) and 2015-00892 (2015). In Open Records Letter Nos. 2014-23518 and 2015-00892, we concluded the commission must withhold the submitted information under section 552.101 of the Government Code in conjunction with 81.046(b) of the Health and Safety Code. We have no indication there has been any change in the law, facts, or circumstances on which the previous rulings were based. Accordingly, the commission must rely on Open Records Letter Nos. 2014-23518 and 2015-00892 as previous determinations and withhold 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).

Next, you acknowledge some of the information at issue was inadvertently released to the media. Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential under law. *See* Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the commission may not now withhold any previously released information unless its release is expressly prohibited by law or the information is confidential under law. Although you raise section 552.107 for a portion of the information at issue, this section does not prohibit the release of information or make information confidential. Open Records Decision Nos. 676 at 6 (2002) (section 552.107(1) is not other law for purposes of section 552.022), 665 at 2 n.5 (2000) (discretionary exceptions generally). The commission also raises section 552.101 of the Government Code for this information, which makes information confidential under the Act. Thus, we will consider the applicability of this exception to the information at issue. We will also consider your arguments for the information that has not been released.

²We assume that 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.

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, such as section 81.046(b) of the Health and Safety Code, which provides as follows:

(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(b). Upon review the information at issue pertains to cases or suspected cases of the Ebola virus disease. Thus, we find section 81.046 governs the release of the information at issue. We understand none of the release provisions of section 81.046 are applicable. Accordingly, we determine the commission must withhold the information at issue under section 552.101 of the Government Code in conjunction with section 81.046(b) of the Health and Safety Code.³

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,



Rustam Abedinzadeh
Assistant Attorney General
Open Records Division

RA/dls

³As our ruling is dispositive, we need not address your arguments against disclosure.

Ref: ID# 550427

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

Stericycle
28161 North Keith Drive
Lake Forest, Illinois 60045
(w/o enclosures)