



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 14, 2016

Ms. Ashley D. Fourt  
Assistant Criminal District Attorney  
Tarrant County  
401 West Belknap, 9th Floor  
Fort Worth, Texas 76196-0201

OR2016-23148

Dear Ms. Fourt:

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# 630686.

Tarrant County Health Department (the "department") received a request for the names and contact information for all persons diagnosed with the West Nile Virus. 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. We understand you to raise section 552.101 in conjunction with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") for the submitted information. At the direction of Congress, the Secretary of Health and Human Services ("HHS") promulgated regulations setting privacy standards for medical records, which HHS issued as the Federal Standards for Privacy of Individually Identifiable Health Information. *See* 42 U.S.C. § 1320d-2 (Supp. IV 1998) (historical & statutory note); Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Pts. 160, 164 ("Privacy Rule"); *see also* Attorney General Opinion JC-0508 at 2 (2002). These standards govern the releasability of protected health information by a covered entity. *See* 45 C.F.R. pts. 160, 164. Under these standards, a covered entity may not use or disclose protected health information, excepted as provided by parts 160 and 164 of the Code of Federal Regulations. 45 C.F.R. § 164.502(a).

This office addressed the interplay of the Privacy Rule and the Act. Open Records Decision No. 681 (2004). In Open Records Decision No. 681, we noted section 164.512 of title 45 of the Code of Federal Regulations provides a covered entity may use or disclose protected health information to the extent such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law. *Id.*; see 45 C.F.R. § 164.512(a)(1). We further noted the Act “is a mandate in Texas law that compels Texas governmental bodies to disclose information to the public.” ORD 681 at 8; see also Gov’t Code §§ 552.002, .003, .021. Therefore, we held the disclosures under the Act come within section 164.512(a). Consequently, the Privacy Rule does not make information confidential for the purpose of section 552.101 of the Government Code. See *Abbott v. Tex. Dep’t of Mental Health & Mental Retardation*, 212 S.W.3d 648 (Tex. App.—Austin 2006, no pet.); ORD 681 at 9; see also Open Records Decision No. 478 at 2 (1987) (statutory confidentiality requires express language making information confidential). Because the Privacy Rule does not make confidential information that is subject to disclosure under the Act, the department may not withhold any portion of the information at issue under section 552.101 of the Government Code on that basis.

Section 552.101 also 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.

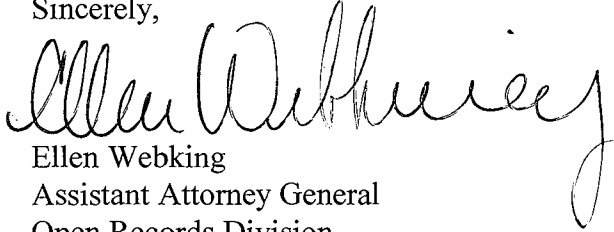
(b) Reports, records, and information relating to cases or suspected cases of diseases or health conditions are not public information under [the Act], and may not be released or made public on subpoena or otherwise except as provided by Subsections (c), (d), and (f).

Health & Safety Code § 81.046(a), (b). You state the submitted information relates to cases or suspected cases of the West Nile Virus. Based on your representations and our review, we agree section 81.046 governs the release of the submitted information. You also state none of the release provisions of section 81.046 are applicable. Accordingly, the department must withhold the submitted 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](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,



Ellen Webking  
Assistant Attorney General  
Open Records Division

EW/bw

Ref: ID# 630686

Enc. Submitted documents

c: Requestor  
(w/o enclosures)