



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 28, 2019

Mr. Randall Miller  
Assistant District Attorney  
Dallas County  
411 Elm Street, 5<sup>th</sup> Floor  
Dallas, Texas 75202-3317

OR2019-14018

Dear Mr. Miller:

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# 767500.

The Dallas County Health and Human Services Department (the "department") received a request for information pertaining to a named individual and specified policies. You state the department does not maintain information responsive to a portion of the request.<sup>1</sup> You state you have released some information. 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 section 81.046 of the Health and Safety Code, which provides in relevant part:

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<sup>1</sup>The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

(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 Health] 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 Chapter 552, Government Code, and may not be released or made public on subpoena or otherwise except as provided by Subsection (c), (c-1), (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* ORD 577; Health & Safety Code § 81.046(b)-(d), (f). We understand the some of the submitted information relates to a case or suspected case of a communicable disease; thus, 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, the department must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 81.046(b) of the Health and Safety Code.<sup>2</sup> However, upon review, we find the department has failed to establish any portion of the remaining information is confidential under section 81.046 of the Health and Safety Code. Accordingly, the department may not withhold any of the remaining information under section 552.101 of the Government Code on that ground.

Section 552.101 of the Government Code also encompasses section 81.103 of the Health and Safety Code, which pertains to tests for acquired immune deficiency syndrome and related disorders. Section 81.103(a) provides the following: “A test result is confidential. A person that possesses or has knowledge of a test result may not release or disclose the test result or allow the test result to become known except as provided by this section.” *Id.* § 81.103(a). A “test result” for purposes of section 81.103 is defined as “any statement that indicates that an identifiable individual has or has not been tested for AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS, including a statement or assertion that the individual is positive, negative, at risk, or has or does not have a certain level of antigen or antibody.” *Id.* § 81.101(5). Upon review, we find the department has failed to establish any portion of the remaining information is confidential under section 81.103 of the Health and Safety Code. Accordingly, the department may not withhold any of the remaining information under section 552.101 of the Government Code on that ground.

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

In summary, the department must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 81.046(b) of the Health and Safety Code. The remaining information must be released.

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,



Paige Lay  
Assistant Attorney General  
Open Records Division

PS/jxd

Ref: ID# 767500

Enc. Submitted documents

c: Requestor  
(w/o enclosures)