



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 21, 2020

Mr. Zachary Brown  
Assistant City Attorney  
City of Austin  
P.O. Box 1088  
Austin, Texas 78767

OR2020-05629

Dear Mr. Brown:

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# 812759 (PIR# C052727 and PIR# X004832).

The City of Austin (the "city") received two requests from different requestors for information pertaining to a specified outbreak at a specified location. 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 representative sample of information.<sup>1</sup>

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses section 81.046 of the Health and Safety Code, which provides, in part:

(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), (c-1), (d), and (f).

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<sup>1</sup> We 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.

Health & Safety Code § 81.046(b). In Open Records Decision No. 577 (1990), this office concluded 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 in the statute applies. *See id.* § 81.046(b)-(d), (f); ORD 577. You state the submitted information relates to cases or suspected cases of food-borne illness; thus, section 81.046 governs the release of the information at issue. You state the release provisions of section 81.046 are not applicable. You also state you have not received consent from the individuals identified in the submitted information. Accordingly, the city must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 81.046(b) of the Health and Safety Code.

The city also asks this office to issue a previous determination that would permit the city to withhold this type of information under section 552.101 of the Government Code in conjunction with section 81.046 of the Health and Safety Code without requesting a ruling from this office. *See* Open Records Decision No. 673 (2001). We decline to issue such a previous determination at this time. Accordingly, 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Alexandra C. Burks  
Attorney  
Open Records Division

ACB/gw

Ref: ID# 812759

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)