



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 10, 2020

Mr. Joseph Behnke
Assistant General Counsel
Office of the Governor
P.O. Box 12428
Austin, Texas 78711

OR2020-17145

Dear Mr. Behnke:

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# 835230 (OOG ID# 199-20).

The Office of the Governor (the "governor's office") received a request for information pertaining to the testing for a specified infectious disease. You claim the submitted information is excepted from disclosure under sections 552.101, 552.107, and 552.111 of the Government Code. You also state you notified the Texas Department of State Health Services (the "department") 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.¹ *See* Gov't Code §§ 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.*

¹ As of the date of this letter, we have not received comments from the department explaining why the submitted information should not be released.

² 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.

§ 552.101. Section 552.101 encompasses information made confidential by other statutes, such as section 81.046 of the Health and Safety Code, which provides, in part, as follows:

(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 [department] 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). 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 set out in the statute applies. *See* ORD 577; Health & Safety Code § 81.046(b)-(d), (f). You state the information at issue relates to information that was furnished to the department and pertains to cases or suspected cases of diseases or health conditions. Based upon your representations and our review, we agree the information at issue is subject to section 81.046. You state the release provisions of section 81.046 are not applicable. Thus, the governor's office 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.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 <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,

Katie Stallcup
Attorney
Open Records Division

AKS/rm

³ As our ruling is dispositive, we need not address your remaining arguments against disclosure of the submitted information.

Ref: ID# 835230

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)