



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 15, 2020

Ms. Roberta Brito  
Assistant City Attorney  
City of El Paso  
P.O. Box 1890  
El Paso, Texas 79950-1890

OR2020-17579

Dear Ms. Brito:

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# 835917 (Ref. No. 20-1052-1078).

The City of El Paso (the "city") received a request for e-mail communications between the El Paso Public Health Department and addresses with specified domains pertaining to certain key terms during a specified time period.<sup>1</sup> You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also state you notified Bioquell 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). We have considered the submitted arguments and reviewed the submitted information.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of

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<sup>1</sup> The city sought and received clarification of the information requested. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

this ruling, we have not received comments from Bioquell. Thus, we have no basis to conclude Bioquell has a protected proprietary interest in the submitted information. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Accordingly, the city may not withhold any of the submitted information on the basis of any proprietary interest Bioquell may have in the information.

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 encompasses information made confidential by 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), (c-1), (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 in the statute applies. *See* ORD 577; Health & Safety Code § 81.046(b)-(d), (f). The city informs us Exhibit B contains reports, records, and information relating to cases or suspected cases of diseases or health conditions. Upon review, we agree section 81.046 governs the release of the information at issue. The city states none of the release provisions of section 81.046 are applicable. Accordingly, the city must withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 81.046(b) of the Health and Safety Code.<sup>2</sup> As we have received no arguments against the disclosure of the remaining information, the city must release the remaining information.

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

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

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,

Emily Kunst  
Assistant Attorney General  
Open Records Division

EK/jlbm

Ref: ID# 835917

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)