



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 22, 2020

Ms. LaNetra S. Lary
Assistant County Attorney
Fort Bend County
401 Jackson Street, 3rd Floor
Richmond, Texas 77469

OR2020-18287

Dear Ms. Lary:

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# 836567

The Fort Bend County Attorney's Office (the "county") received a request for all communications sent to named county officials by a named individual related to a specified topic during a specified time period. You claim the submitted information is not subject to the Act. Alternately, you claim the submitted information is excepted from disclosure under sections 552.101 and 552.111 of the Government Code. You also state you notified the Texas Department of State Health Services (the "department") of the request.¹ *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released). We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

¹ As of the date of this letter, we have not received any comments from any third-party explaining why any portion of the submitted information should not be released to the requestor.

² **Error! Main Document Only.** 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.

Initially, we understand you to argue the submitted information is not subject to the Act. The Act applies to “public information,” which is defined in section 552.002 of the Government Code as:

(a) . . . information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body; or

(2) for a governmental body and the governmental body:

(A) owns the information;

(B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer’s or employee’s official capacity and the information pertains to official business of the governmental body.

Id. § 552.002(a). Thus, virtually all of the information in a governmental body’s physical possession constitutes public information and thus is subject to the Act. *Id.* § 552.002(a)(1); *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The Act also encompasses information that a governmental body does not physically possess. Information that is written, produced, collected, assembled, or maintained by a third party, including an individual officer or employee of a governmental body in his or her official capacity, may be subject to disclosure under the Act if a governmental body owns, has a right of access, or spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information. Gov’t Code § 552.002(a); *see* Open Records Decision No. 462 at 4 (1987). Information is “in connection with the transaction of official business” if the information is created by, transmitted to, received by, or maintained by a person or entity performing official business or a government function on behalf of a governmental body and the information pertains to official business of the governmental body. *See* Gov’t Code § 552.002(a-1). Moreover, section 552.001 of the Act provides that it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees. *See id.* § 552.001(a).

The county argues the submitted information is not “public information” subject to the Act, because it consists of reports furnished to the Texas Department of State Health Services. However, we note the submitted information is in the possession of the county and the

county has submitted the information at issue as responsive to the instant request for information. Accordingly, we find the county maintains this information in connection with the transaction of its official business. Thus, the submitted information constitutes public information subject to the Act and may only be withheld if an exception to disclosure under the Act applies.

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.* § 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:

(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). 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 submitted information was created by or provided to the county’s Health Department during investigations under chapter 81 of the Health and Safety Code. Based on your representations and our review, we agree the submitted information is subject to section 81.046. You state the release provisions of section 81.046 are not applicable. Thus, the county 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->

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

[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,

Sean McCormick
Assistant Attorney General
Open Records Division

SMC/be

Ref: ID# 836567

Enc. Submitted documents

c: Requestor
(w/o enclosures)