



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 22, 2020

Ms. Dylbia L. Jefferies Vega
Attorney
Cameron County
1100 East Monroe Street
Brownsville, Texas 78520

OR2020-23899

Dear Ms. Vega:

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# 845059.

The Cameron County Health Department (the "department") received a request for COVID-19 related records at a specified detention center and communications between the department and other specified officials regarding specified topics. 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section 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). Upon review, we find some of the information at issue consists of records and information relating to cases or suspected cases of COVID-19. None of the release provisions of section 81.046 are applicable. Accordingly, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 81.046(b) of the Health and Safety Code. 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.

Some of the remaining information may be subject to section 552.117 of the Government Code.¹ Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). Section 552.117(a)(1) also applies to the personal cellular telephone number of a current or former official or employee of a governmental body, provided the cellular telephone service is not paid by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. Therefore, to the extent the employee at issue timely requested confidentiality under section 552.024 of the Government Code, the department must withhold the cellular telephone number we have marked under section 552.117(a)(1) of the Government Code if the cellular telephone service is not paid for by a governmental body. The department may not withhold this information if the individual whose information is at issue did not make a timely election to keep the information confidential or the cellular telephone service is paid for by a governmental body.

In summary, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 81.046(b) of the Health and Safety Code. If the individual whose information is at issue timely requested confidentiality pursuant to section 552.024 of the Government Code and the cellular

¹ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

telephone service is not paid for by a governmental body, the department must withhold the cellular telephone number we marked under section 552.117(a)(1) of the Government Code. The department 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 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,

Pearlie Gault
Attorney
Open Records Division

PG/rm

Ref: ID# 845059

Enc. Submitted documents

c: Requestor
(w/o enclosures)