

PUBLIC HEALTH QUESTIONS RELATED TO COVID-19

The Texas Association of Counties is always available to discuss issues that arise in your county. During this ongoing COVID-19 outbreak, we understand that these matters are particularly complex and time-sensitive. Our goal is to provide you with resources that address frequent topics that arise in states of emergency. We encourage you to discuss these and any other legal questions with your county attorney. You can always call the TAC Helpline at (888) 275-8224 and one of our legal staff will be happy to assist you.

PUBLIC / LOCAL HEALTH AUTHORITIES

What is a “public health authority” under Texas law?

In Texas, a public health authority is called a “local health authority.” A local health authority (LHA) is a competent and reputable physician licensed to practice medicine in Texas who is appointed by a municipality or county to administer state and local laws relating to public health within the appointing authority’s applicable jurisdiction. Tex. Health & Safety Code §§121.002; 121.021; 121.022. Counties that have established local health departments, a public health district, or that receive grants from the Department of State Health Services (DSHS) for essential public services are required to appoint an LHA. Tex. Health & Safety Code §§121.028(b); 121.033; 121.041. In a county that has a local health department, the local health department director serves as the county’s LHA, provided that the director is a physician. Tex. Health & Safety Code §121.033(d). If the local health department director is not a physician, he or she is required to appoint a physician as the LHA, subject to approval by the DSHS and commissioners court. Tex. Health & Safety Code §121.033(d). A county that does not have a local health department may appoint an LHA. Tex. Health & Safety Code § 121.028(a).

An LHA has supervisory authority and control over the administration of communicable disease control measures within his or her jurisdiction unless specifically preempted by the state. Tex. Health & Safety Code §81.082. The LHA is also authorized to perform each duty that is necessary to implement and enforce a law to protect the public health or prescribed by DSHS, including the right of entry to real property and a right of access to an individual that is in isolation or quarantine. Tex. Health & Safety Code §§121.024; 81.065. The LHA’s responsibilities also include, among others: (1) establishing, maintaining, and enforcing quarantine in the LHA’s jurisdiction; (2) aiding DSHS with local quarantine, inspection, disease prevention and suppression, birth and death statistics, and general sanitation within the LHA’s jurisdiction; (3) reporting the presence of contagious, infectious, and dangerous epidemic diseases in the county; (4) reporting to the DSHS on any subject on which it is proper for a report to DSHS to be made; and (5) aiding DSHS in enforcing proper rules, requirements, ordinances, sanitation laws, quarantine rules, and vital statistics collection. Tex. Health & Safety Code §121.024.

PROTECTED HEALTH INFORMATION

Does Texas law allow for disclosure of protected health information to local health authorities or individuals?

Yes. The Texas Communicable Disease Prevention and Control Act (Health & Safety Code Chapter 81) allows for disclosure of information linking a person who is exposed to a person with a communicable

disease as well as required disclosure of monitored individuals to first responders. Information related to a person with a communicable disease can be released generally for statistical purposes so long as the release protects the identity of any person. Tex. Health & Safety Code §81.046(c)(1). Medical or epidemiological information, including information linking a person who is exposed to a person with a communicable disease, may be released:

1. for statistical purposes if released in a manner that prevents the identification of any person;
2. with the consent of each person identified in the information;
3. to medical personnel treating the individual, appropriate state agencies in this state or another state, a health authority or local health department in this state or another state, or federal, county, or district courts to comply with this chapter and related rules relating to the control and treatment of communicable diseases and health conditions or under another state or federal law that expressly authorizes the disclosure of this information;
4. to appropriate federal agencies, such as the Centers for Disease Control and Prevention, but, except as provided under Subsection (c-3), the information must be limited to the name, address, sex, race, and occupation of the patient, the date of disease onset, the probable source of infection, and other requested information relating to the case or suspected case of a communicable disease or health condition;
5. to medical personnel to the extent necessary in a medical emergency to protect the health or life of the person identified in the information;
6. to a designated infection control officer;
7. to governmental entities that provide first responders who may respond to a situation involving a potential communicable disease of concern and need the information to properly respond to the situation; or
8. to a local health department or health authority for a designated monitoring period based on the potential risk for developing symptoms of a communicable disease of concern.

Tex. Health & Safety Code §81.046(c)(1)-(8).

Only the minimum necessary information may be released to first responders and local health departments or LHAs for a designated monitoring period, as determined by an LHA, local health department, governmental entity, or DSHS. Id. Tex. Health & Safety Code 81.046(c-2).

Does the Health Insurance Portability and Accountability Act (HIPAA) allow protected health information to be disclosed to a local health authority without the individual's consent?

Yes. HIPAA provides that health plans, health care clearinghouses, and health care providers may use or disclose protected health information without the written authorization of the individual or the opportunity for the individual to agree or object to:

(i) A public health authority that is authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions; or, at the direction of a public

health authority, to an official of a foreign government agency that is acting in collaboration with a public health authority.

...

(iv) A person who may have been exposed to a communicable disease or may otherwise be at risk of contracting or spreading a disease or condition, if the covered entity or public health authority is authorized by law to notify such person as necessary in the conduct of a public health intervention or investigation

45 C.F.R. §164.512(b)(i), (iv). See this [U.S. Department of Health and Human Services bulletin](#) as well.

Public health authority means an agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, or a person or entity acting under a grant of authority from or contract with such public agency, including the employees or agents of such public agency or its contractors or persons or entities to whom it has granted authority, that is responsible for public health matters as part of its official mandate. 45 C.F.R. §164.501.

Must a LHA disclose information about COVID-19 to first responders?

Yes. A local health department or health authority shall provide to first responders the physical address of a person who is being monitored by the local department or authority for a communicable disease for the duration of the disease's incubation period. Tex. Health & Safety Code §81.046(c-1). The local health department, health authority, or other governmental entity, as applicable, shall remove the person's physical address from any computer-aided dispatch system after the monitoring period expires.

Reports, records, and information relating to cases or suspected cases of diseases or health conditions may be released to the extent necessary during a public health disaster, including an outbreak of a communicable disease, to law enforcement personnel and first responders solely for the purpose of protecting the health or life of a first responder or the person identified in the report, record, or information. Only the minimum necessary information may be released under this subsection, as determined by the health authority, the local health department, or DSHS. Tex. Health & Safety Code §81.046(f).

Who is considered a first responder for the purposes of the Texas Communicable Disease Prevention and Control Act?

First responders are defined as public safety employees or volunteers whose duties include responding rapidly to an emergency. Examples of first responders include peace officers, fire protection personnel, certified firefighters or members of an organized volunteer firefighting unit, and individuals certified as emergency medical services personnel by DSHS. Tex. Gov't Code §421.095(1).

INFORMATION SHARED WITH THE PUBLIC

What can a county official say publicly about local cases of COVID-19?

A county official can say how many cases exist in the county so long as they do not identify any individuals. Tex. Health & Safety Code §81.046(c)(1). A county should not disclose any additional information to the public about the cases to avoid disclosing protected health information. In addition to local resources a county may have, the Department of State Health Services has a web page with [cases in each Texas county](#).

Is information received under the Texas Communicable Disease Prevention and Control Act considered public information under the Public Information Act?

No. Reports, records, and information relating to cases or suspected cases of diseases or health conditions are not public information under Chapter 552 of the Government Code. Tex. Health & Safety Code §81.046(b). This also includes investigations by local health authorities into suspected cases of diseases. [Open Records Decision No. 577 \(1990\)](#) (concluding that 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); [Op. Tex. Att’y Gen. No. OR2009-10186 \(2009\)](#) (concluding information gathered or created by the city’s health department pursuant to the provisions of chapter 81 were not subject to disclosure under the Public Information Act).

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