



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

JOHN L. HILL  
ATTORNEY GENERAL

December 12, 1974

The Honorable James E. Peavy, M. D.  
Commissioner of Health  
Texas State Department of Health  
1100 West 49th Street  
Austin, Texas 78756

Open Records Decision No. 61

Re: Confidentiality of records  
dealing with nursing and  
convalescent homes.

The Honorable Stuart I. Draper, M. D.  
Director  
Midland-Ector-Howard County Health  
Department  
Box 4905  
Midland, Texas 79701

Gentlemen:

Pursuant to section 7 (a) of the Open Records Act, article 6252-17a, V. T. C. S., Dr. Peavy has asked whether records dealing with nursing and convalescent homes are excepted from disclosure by section 3(a)(1) of the Act, which excepts from disclosure "information deemed confidential by law . . . ." The inquiry was prompted by a request for "access to all reports, audits, evaluations, and investigations made by your agency of nursing and convalescent homes."

Article 4442c, §13, V. T. C. S., provides:

Information received by the Licensing Agency through filed reports, inspection, or as otherwise authorized under this law shall not be disclosed publicly, except as authorized elsewhere in this Act, in such manner as to identify individuals or institutions as defined herein except in a proceeding involving the question of licensure. (Emphasis added).

This provision makes material gathered by the Department of Health as the State "Licensing Agency" confidential by law and excepted from disclosure, but only to the extent that such information can not be released without identifying individuals or institutions involved.

We understand the Department of Health gathers information about nursing and convalescent homes for purposes other than fulfilling its role as the state licensing agency. By contract with the Department of Welfare, the Department of Health has agreed to gather information on nursing and convalescent homes to obtain the funds and benefits available under the Federal Social Security Act, a program in which Texas has elected to participate. Texas Medical Assistance Act of 1967, V. T. C. S., art. 695j-1.

A recent addition to the federal regulations governing medical assistance programs, (45 C. F. R. 250) requires state plans to provide a procedure for disclosure of information compiled after January 31, 1973, by the state standard-setting agency, which in this case is the Department of Health. 39 Fed. Reg. 16973 (May 10, 1974), adding section 250.70 to title 45 of the Code of Federal Regulations. Information compiled by the Department of Health is expressly made subject to disclosure by section 250.70 and is not licensing information within the scope of article 4442c, section 13, V. T. C. S. Section 250.70(b) requires that some types of information not be made public until the institution involved has had thirty days to review and offer explanatory comments on the report.

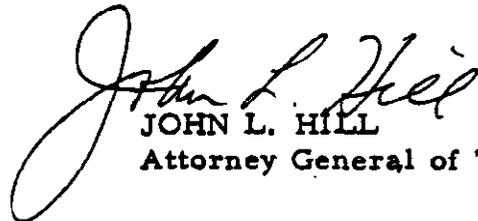
Information gathered by the Department of Health on nursing and convalescent homes in its role as the state licensing agency under article 4442c, may be similar to the information gathered under the state plan for medical assistance under the Social Security Act. But information gathered under the latter plan is not exempted from public disclosure except that names of individual patients and individual health care practitioners are confidential for the purposes of 45 C. F. R., section 250.70(b).

The requested information including "all reports, audits, evaluations, and investigations made by your agency of nursing and convalescent homes" is public information unless gathered solely for the purposes of state licensing. Even if gathered solely for that purpose, the information

is public to the extent that it can be released without identifying individuals or institutions. Information about nursing or convalescent homes which is gathered for purposes other than state licensing is public information even if such information duplicates that gathered for purposes of state licensure. Deficiency reports and inspection reports in response to complaints are public information unless done solely to satisfy state licensing requirements and cannot be released without identifying individuals or institutions.

A similar request for information was received by a county health department. County health departments which participate with the State Health Department in gathering such information are under the same duty to disclose information unless it is gathered solely for the State Health Department for the purposes of state licensure and cannot be released without identifying individuals or institutions. Information gathered by county health departments for county purposes is public information.

Very truly yours,

  
JOHN L. HILL  
Attorney General of Texas

APPROVED:

  
DAVID M. KENDALL, First Assistant

  
C. ROBERT HEATH, Chairman  
Opinion Committee