



The Attorney General of Texas

April 4, 1980

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Mr. Wade Adkins
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Open Records Decision No. 237

Re: Whether records of an emergency medical service regarding the transportation of patients are available to a member of the legislature.

Dear Mr. Adkins:

You have requested our decision under the Open Records Act, article 6252-17a, V.T.C.S., as to whether records of an emergency medical service regarding the transportation of patients are available to a member of the legislature.

These records consist of incident reports filed by ambulance drivers and attendants who are employees of the Emergency Medical Service System of the El Paso City-County Health Unit. Each report relates to emergency medical treatment and transportation to a hospital of persons who have given birth under the care of lay midwives. The reports describe in detail each patient's physical condition, the circumstances surrounding the birth of the infant, and the emergency treatment administered to both mother and child. The requestor has specifically asked that the names of the patients not be deleted.

We believe the information at issue here is protected from disclosure to the public by either a common law or constitutional right of privacy by section 3(a)(1) of the Open Records Act, which excepts

information deemed confidential by law, either Constitutional, statutory, or by judicial decision.

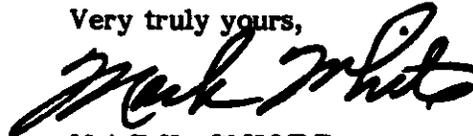
In Attorney General Opinion H-390 (1974) medical records of individual citizens were found to be within the ambit of section 3(a)(1) and were thus excepted from disclosure to the general public. See also Industrial Foundation of the South v. Texas Industrial Accident Board, 540 S.W.2d 668, 679 (Tex. 1976).

Even though a document may not be available to the general public, it is possible that it is required to be revealed to a member of the legislature. Sections 3(b) and 14(c) of the Open Records Act provide:

- 3(b) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from individual members or committees of the legislature to use for legislative purposes.
- 14(c) This Act does not give authority to withhold information from individual members of committees of the Legislature of the State of Texas to use for legislative purposes.

On several occasions this office has indicated that the special right of access afforded legislators by these two portions of the Act does not extend to information excepted from disclosure by statute or common law, *i.e.*, by section 3(a)(1). Attorney General Opinions H-427, H-353 (1974); Open Records Decision Nos. 163 (1977); 119 (1976); 113 (1975); 62, 44 (1974). Both provisions state merely that nothing in the Open Records Act provides authority to withhold information from a member of the legislature who seeks the information for legislative purposes. Here the information, so long as it is personally identifiable, is made confidential by a common law or constitutional right of privacy rather than by the Open Records Act. Accordingly, sections 3(b) and 14(c) do not provide a legislator with a special right of access to individual's medical records under the Open Records Act.

Very truly yours,



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