



# The Attorney General of Texas

September 23, 1981

**MARK WHITE**  
Attorney General

Supreme Court Building  
P.O. Box 12548  
Austin, TX. 78711  
512/475-2501

1607 Main St., Suite 1400  
Dallas, TX. 75201  
214/742-8944

4824 Alberta Ave., Suite 160  
El Paso, TX. 79905  
915/533-3484

1220 Dallas Ave., Suite 202  
Houston, TX. 77002  
713/650-0666

806 Broadway, Suite 312  
Lubbock, TX. 79401  
806/747-5238

4309 N. Tenth, Suite B  
McAllen, TX. 78501  
512/682-4547

200 Main Plaza, Suite 400  
San Antonio, TX. 78205  
512/225-4191

An Equal Opportunity/  
Affirmative Action Employer

W. Kent Johnson  
Chief of Legal Services  
Texas Department of Mental Health  
and Mental Retardation  
P.O. Box 12668  
Austin, Texas 78711

Open Records Decision No. 282

Re: Availability under Open  
Records Act of information  
developed in inspection  
of state mental hospitals

Dear Mr. Johnson:

You have requested our decision under the Open Records Act, article 6252-17a, V.T.C.S., as to the availability of internal reports of the Texas Department of Mental Health and Mental Retardation relating to inspections of certain of its facilities. You suggest that the reports are excepted from disclosure by sections 3(a)(3) and 3(a)(11) of the act.

The reports at issue here are the subject of presently pending litigation, Wells v. Killough, cause no. TY-80-110-CA, filed in the United States District Court for the Eastern District of Texas. In addition, in another related action, R.A.J. v. Kavanagh, cause no. CA3-74-394-C, filed in the United States District Court for the Northern District of Texas, there is presently in effect a three-year consent agreement under which numerous issues related to this information may be litigated. Both the attorney for the department and the assistant attorney general who represents the department have determined that the reports should be withheld from disclosure under section 3(a)(3). We believe that this determination is reasonable. We have examined the materials and have determined them to be relevant to the litigation. The reports, therefore, are excepted from disclosure at this time by section 3(a)(3) of the Open Records Act, as "information relating to litigation." Open Records Decision Nos. 270, 266 (1981); 141, 135 (1976). In view of this determination, we need not address the applicability of section 3(a)(11).

Very truly yours,

MARK WHITE  
Attorney General of Texas

JOHN W. FAINTER, JR.  
First Assistant Attorney General

RICHARD E. GRAY III  
Executive Assistant Attorney General

Prepared by Rick Gilpin  
Assistant Attorney General

APPROVED:  
OPINION COMMITTEE

Susan L. Garrison, Chairman  
Jon Bible  
Rick Gilpin  
Jim Moellinger  
Bruce Youngblood