



# The Attorney General of Texas

April 15, 1983

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Attorney General

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City of Garland  
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Open Records Decision No. 370

Re: Whether records concerning emergency transfers of patients are excepted from public disclosure by section 5.08(b) of article 4495b, V.T.C.S., the Medical Practice Act and section 3(a)(1) of the Open Records Act

Dear Ms. Muncy and Mr. Hinton:

You have requested our decision under the Open Records Act, article 6252-17a, V.T.C.S., as to whether certain records regarding the emergency transfer of patients are excepted from disclosure.

A reporter has requested that both the city of Dallas and the city of Garland make available each "patient form" and "emergency transfer form" prepared by the emergency medical services (hereinafter "EMS") of the respective cities. The "patient form" lists the patient's name and other identifying information, as well as the type and location of the patient's injury or illness, and the kind of aid provided by EMS personnel, who prepare the form. The "emergency transfer form" records the patient's name, vital signs, transferring and receiving hospital, diagnosis, reasons for the transfer of the patient from one facility to another, and the name of the doctor requesting the transfer. You suggest that because EMS personnel are frequently in radio communication with a physician while providing the aid reflected in the forms, the information contained therein constitutes "records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician" deemed confidential by section 5.08(b) of article 4495b, V.T.C.S., the Medical Practice Act. Thus you argue, such information is excepted from disclosure by section 3(a)(1) of the Open Records Act as "information deemed confidential by law."

In Open Records Decision No. 324 (1982), this office said that records of blood tests taken by or under the supervision of a physician constitute "records. . . created. . . by a physician." In

that situation, however, the tested patients were "seen by a person licensed to practice medicine" as a part of the testing procedure. By contrast, the records at issue here are prepared prior to the time that any physician sees the patient. Indeed, the last item on the "patient form," the signature of the doctor or registered nurse accepting the patient, is accompanied by the following disclaimer: "Doctor or R.N. signature below does not approve or disapprove above information." In such circumstances, we do not believe that the mere fact that EMS personnel are often in radio contact with a physician is sufficient to convert these EMS forms into records "created" by a physician. If particular forms indicate that they were prepared by or under the supervision of a physician, they will be excepted from public disclosure by section 5.08(b) of article 4495b, V.T.C.S.

Even if the EMS records under consideration are not excepted as records of a physician under the Medical Practice Act, however, some of the information contained therein may be withheld under section 3(a)(1) of the Open Records Act, as information deemed confidential by judicial decisions recognizing common law privacy or by constitutional privacy. As the supreme court held in Industrial Foundation of the South v. Texas Industrial Accident Board, 540 S.W.2d 668 (1976), a common law privacy exists in any information which contains highly intimate or embarrassing facts, the disclosure of which would be highly objectionable to a person of ordinary sensibilities, provided the information is of no legitimate concern to the public. Open Records Decision Nos. 351, 343, 339, 328, 318, 316 (1982); 215 (1978); 142 (1976). In Open Records Decision No. 262 (1980), this office said that information contained in EMS reports might raise a claim of constitutional or common law privacy if it relates to, for example:

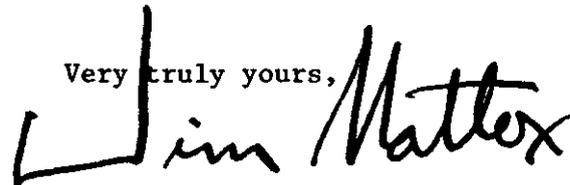
a drug overdose, acute alcohol intoxication,  
obstetrical/gynecological illness, convulsions/  
seizures or emotional/mental distress.

The information contained on the "patient form" which discloses type and location of injury or illness, and aid provided and drugs administered by EMS personnel, will sometimes relate to one of these protected categories. You suggest that if illness or injury information is furnished for some patients, but not for others, it will be easy to deduce that those for whom it is withheld have sustained injuries or illnesses which relate to a protected category. In our view, although this argument is a reasonable one, it cannot be squared with the supreme court's ruling in Industrial Foundation of the South v. Texas Industrial Accident Board, supra. The court specifically rejected the claim that all medical information may be withheld by a common law right of privacy, id., at 681-82, and made clear that there is no substitute for individual determinations of whether particular illness or injury information is excepted by common law privacy, in spite of "the enormity of the task which a

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case-by-case review" might entail. Id., at 686. Unless or until the supreme court or the legislature changes this result, we are obliged to follow it. As a result, the standard to be applied to determine the confidentiality of medical records which are neither created or maintained by a physician remains that announced in Open Records Decision No. 262. We conclude that, in the situation presented here, "emergency transfer forms" are excepted from disclosure only to the extent that they contain information protected by a constitutional right of privacy or "highly intimate or embarrassing facts, the disclosure of which would be highly objectionable to a person of ordinary sensibilities," and that such determinations must be made on an individual basis.

Very truly yours,

A handwritten signature in black ink that reads "Jim Mattox". The signature is written in a cursive, slightly slanted style.

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