



The Attorney General of Texas

April 29, 1983

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An Equal Opportunity/
Affirmative Action Employer

Mr. Marlin W. Johnston
Commissioner
Texas Department of Human Resources
706 Banister Lane
Austin, Texas 78769

Open Records Decision No. 374

Re: Whether names of doctors who received medicaid and amount of payments to them are available under the Texas Open Records Act

Dear Mr. Johnston:

You have requested our decision under the Open Records Act, article 6252-17a, V.T.C.S., as to whether the names of physicians who receive medicaid payments, and the amounts paid, are subject to disclosure. You specifically ask whether such information is excepted from disclosure by sections 3(a)(1) or 3(a)(2) of the Open Records Act.

Section 3(a)(2) excepts information whose disclosure would violate the privacy of employees of a public body. The physicians who are the subject of this request are not employees of a public body, and therefore section 3(a)(2) is clearly inapplicable.

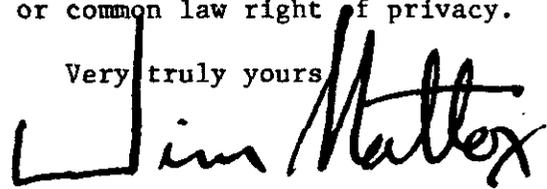
Section 3(a)(1) excepts "information deemed confidential by law." In this instance, you suggest that the constitutional and common law rights of privacy are most clearly at issue. Constitutional privacy protects information within one of the "zones of privacy" delineated by the United States Supreme Court: marriage, procreation, contraception, family relationships, and child rearing and education. Open Records Decision Nos. 343, 328, 318 (1982); 269 (1981); 262, 260 (1980); 215, 201 (1978). The requested information about medicaid payments to physicians is not within one of the protected categories.

Common law privacy exists in any information which contains highly intimate or embarrassing facts about a person, the disclosure of which would be highly offensive to a person of ordinary sensibilities. See Industrial Foundation of the South v. Texas Industrial Accident Board, 540 S.W.2d 668, 679 (Tex. 1976). This office addressed a question similar to that presented here in Open Records Decision No. 268 (1981). There it was held that the names and addresses of owners of publicly subsidized housing units, and the amounts paid to such owners by the housing authority on behalf of

eligible tenants, were not excepted by a common law right of privacy. In our opinion, this principle is applicable to the situation about which you inquire.

You are concerned that two federal cases require a different result. See The American Association of Councils of Medical Staffs of Private Hospitals, Inc. v. Health Care Financing Administration, No. 78-1373 (E.D. La. 1980) (unpublished); Florida Medical Association v. Department of Health, Education and Welfare, 479 F.Supp. 1291 (M.D. Fla. 1979). These cases construe provisions of federal law not relevant to the information in question. We conclude that the names of physicians who receive medicaid payments, and the amounts paid to such physicians, are not excepted from disclosure under section 3(a)(1) of the Open Records Act, as information deemed confidential by law, specifically, a constitutional or common law right of privacy.

Very truly yours



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