



The Attorney General of Texas

May 26, 1983

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Robert Bernstein, M.D., FACP
Commissioner
Texas Department of Health
1100 West 49th Street
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Open Records Decision No. 384

Re: Whether certain ambulance activity reports are available to the public under the Open Records Act

Dear Dr. Bernstein:

You have asked whether the Open Records Act, article 6252-17a, V.T.C.S., requires you to release certain ambulance activity reports that were filed with the department by the Kerr County Emergency Medical Service. You suggest that the portions of these reports that contain information relating to the illness or injury of the persons who were transported are "confidential" within the meaning of section 3(a)(1) of the Open Records Act, which excepts from required public disclosure information deemed confidential by law.

Article 4447d, V.T.C.S., provides in relevant part:

Section 1. Any . . . organization may provide information, interviews, reports, statements, memoranda, or other data relating to the condition and treatment of any person to the State Department of Health. . . to be used in the course of any study for the purpose of reducing morbidity or mortality, . . .

Sec. 2. The State Department of Health. . . shall use or publish said material only for the purpose of advancing medical research or medical education in the interest of reducing morbidity or mortality, except that a summary of such studies may be released by any such group for general publication. The identity of any person whose condition or treatment has been studied shall be confidential and shall not be revealed under any circumstances except in the case of immunization surveys. . . With the exception of immunization information, all information, interviews, reports, statements, memoranda, or other data furnished by

reason of this Act and any findings or conclusions resulting from such studies are declared to be privileged. (Emphasis added).

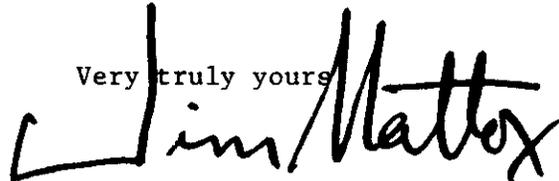
In your brief, you stated:

The department receives these reports from the Kerr County EMS for the purpose of promoting the prompt and efficient delivery of adequate emergency medical services to high risk infants during the neonatal period and persons who are injured or suffering from acute illness. See V.T.C.S. art. 4447o, §2(a). This purpose, of course, is part of the department's general public health purpose of reducing morbidity or mortality.

We believe that the portions of the EMS reports at issue here constitute "information. . . or other data relating to the condition and treatment of any person" within the meaning of section 1 of article 4447d. Assuming that this information is in fact used for the purpose which you have described, we further believe that this information may be said to be used "in the course of any study for the purpose of reducing morbidity or mortality" within the meaning of section 1 thereof and "for the purpose of advancing medical research or medical education in the interest of reducing morbidity or mortality" within the meaning of section 2 thereof. Accordingly, this information is "privileged" within the meaning of section 2.

Although this office has issued one decision holding that the words "privileged" and "confidential" are not synonymous, Open Records Decision No. 290 (1981), other decisions have taken the contrary view. See, e.g., Open Records Decision No. 251 (1980). Open Records Decision No. 290 dealt with a particular statute wherein a contrary construction would have produced absurd consequences; accordingly, that decision must be limited to its own particular facts. We believe that in this case "privileged" and "confidential" are synonymous. We therefore conclude that the illness and injury information about which you have inquired is "confidential" within the meaning of section 3(a)(1) of the Open Records Act.

Very truly yours



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