



## The Attorney General of Texas

February 23, 1984

**JIM MATTOX**  
Attorney General

Supreme Court Building  
P. O. Box 12548  
Austin, TX. 78711-2548  
512/475-2501  
Telex 910/874-1367  
Telecopier 512/475-0266

714 Jackson, Suite 700  
Dallas, TX. 75202-4506  
214/742-8844

4824 Alberta Ave., Suite 160  
El Paso, TX. 79905-2793  
915/533-3484

1001 Texas, Suite 700  
Houston, TX. 77002-3111  
713/223-5886

806 Broadway, Suite 312  
Lubbock, TX. 79401-3479  
806/747-5238

4309 N. Tenth, Suite B  
McAllen, TX. 78501-1685  
512/682-4547

200 Main Plaza, Suite 400  
San Antonio, TX. 78205-2797  
512/225-4191

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Mr. John C. Ross, Jr.  
Lubbock City Attorney  
P. O. Box 2000  
Lubbock, Texas 79457

Open Records Decision No. 407

Re: Whether information regarding  
an outbreak of hepatitis A is  
excepted from disclosure under  
the Open Records Act

Dear Mr. Ross:

The insurance carrier for a restaurant in the city of Lubbock is investigating an outbreak of hepatitis in that city. The carrier has asked you to provide it with certain information, and you have asked whether the Open Records Act, article 6252-17a, V.T.C.S., requires you to comply with this request. In its request letter, the carrier stated:

We would appreciate knowing how many hepatitis A cases have been confirmed up to date, and how many the health unit relates to People's restaurant. We would like to have the names and specific details of each individual's record as to name, address, date became ill and diagnosed, and the type of diagnosis that the doctors performed if this information can be supplied to us by the health unit. Likewise, any other findings by your investigators would be appreciated as well. We would also like to know the time span in which the health unit attributes hepatitis A being contracted at People's restaurant. In other words, if someone ate there on September 1, 1983, and they came down with hepatitis, does the health unit attribute this to People's restaurant? Likewise, we would like to know in written form the date of all inspections of the restaurant in the past six months by the health department, what was found, and what the past sanitation was at the restaurant.

You have informed us that you have complied with the carrier's request for the information specified in the first and last sentences.

Therefore, we need only decide whether the remainder must be disclosed.

We first consider the request for the "names and specific details of each individual's record as to name, address, date became ill and diagnosed, and the type of diagnosis that the doctors performed." You contend that section 3.06 of new article 4419b-1, V.T.C.S., the Communicable Disease Prevention and Control Act, Acts 1983, 68th Leg., ch. 255 at 1116, makes this information confidential, because this information was supplied to the city health department by physicians pursuant to the requirements of that act.

Among other things, article 4419b-1 requires physicians to "report to the local health authority, after [their] first professional encounter, each patient . . . [they examine] having or suspected of having a reportable disease." Sec. 3.03(a). Sections 3.04 and 3.05 of the act impose additional reporting requirements. Section 3.06 of the act provides:

Reports of diseases furnished to the health authority or the department [of health] are confidential and may be used only for the purpose of this Act. Reports of disease are not public information under [the Open Records Act]. Information contained in the reports of disease may be used for statistical and epidemiological studies that are public information as long as an individual is not identifiable. (Emphasis added).

This section states that reports required by section 3.03 et seq. are not public information. Accordingly, if the information requested in the second sentence of the carrier's request is contained in reports supplied by physicians pursuant to these sections of the act, it is not subject to disclosure under the Open Records Act.

We last consider the carrier's request for "other findings by your investigators," for "the time span in which the health unit attributes hepatitis A being contracted at People's Restaurant," and for this information: "if someone ate there on September 1, 1983, and they came down with hepatitis, does the health unit attribute this to People's Restaurant?" You do not contend that this information is confidential under the terms of section 3.06 of article 4419b-1, nor do you contend that it is within any other exception of the Open Records Act. Instead, you state that this information will be included in the investigation report that will, upon completion, be furnished to the insurance carrier pursuant to section 6(1) of the Open Records Act, which specifically makes public "reports, audits, evaluations, and investigations made of, for, or, by, governmental bodies upon completion." As we understand it, you are impliedly

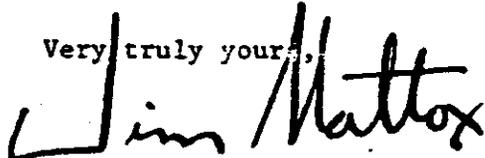
arguing that the Open Records Act does not require you to release this information until the report in which it will appear is completed.

This office rejected this argument in Open Records Decision No. 140 (1976), and we again reject it. Although section 6 of the Open Records Act "specifically [makes] public" certain categories of information, including "investigations . . . upon completion," information in the possession of a governmental body which has not yet become part of a finalized investigative report may not be withheld simply because the report is not yet completed. Open Records Decision Nos. 344, 335, 321 (1982). Section 6 provides that "[w]ithout limiting the meaning of other sections of this Act," certain information is specifically made public, and one section whose meaning necessarily is not limited is section 3(a). Section 3(a) provides that "[a]ll information . . . maintained by governmental bodies pursuant to law or ordinance or in connection with the transaction of official business is public information . . . with the following exceptions only." (Emphasis added). Thus, in instances in which a governmental body is asked to release information in its possession, it need only answer this twofold question: (1) was the information "collected, assembled, or maintained by [the governmental body] pursuant to law or ordinance or in connection with the transaction of official business"; and (2) if so, is at least one of the section 3(a) exceptions applicable? If the first question is answered in the affirmative and the second in the negative, the requested information must be released.

This last information was collected "pursuant to law or ordinance or in connection with the transaction of official business" and the city currently maintains it. It is therefore subject to disclosure unless excepted under section 3(a). As noted, however, you did not claim that it is within any section 3(a) exception. Assuming that this information is not within section 3.06 of article 4419b-1, we are aware of no other statute, constitutional provision, or judicial decision that would make it confidential under section 3(a)(1) of the act, which is the only exception that this office invokes on its own.

In summary, any of the requested information that is within section 3.06 of article 4419b-1 need not be released; the remainder is available to the public.

Very truly yours,



J I M M A T T O X

Attorney General of Texas

TOM GREEN  
First Assistant Attorney General

DAVID R. RICHARDS  
Executive Assistant Attorney General

Prepared by Jon Bible  
Assistant Attorney General

APPROVED:  
OPINION COMMITTEE

Rick Gilpin, Chairman  
Jon Bible  
Colin Carl  
Susan Garrison  
Jim Moellinger  
Nancy Sutton