



**THE ATTORNEY GENERAL  
OF TEXAS**

October 20, 1986

**JIM MATTOX  
ATTORNEY GENERAL**

Robert Bernstein, M.D.  
Commissioner of Health  
Texas Department of Health  
1100 West 49th Street  
Austin, Texas 78756

Open Records Decision No. 442

Re: Whether information collected by the Texas Department of Health regarding a shigellosis outbreak is available to the public under the Open Records Act, article 6252-17a, V.T.C.S.

Dear Dr. Bernstein:

The Texas Department of Health has been asked to release:

[C]opies of any and all documentation and/or tapes of the current investigation by your department of any outbreak of shigellosis, caused by the shigella bacteria, in Ector and Midland counties, Texas [including] but not limited to, the names of any food establishments, grocery stores, nursing homes, day-care centers, hospitals or restaurants that may have been under investigation by your agency in regard to the shigella bacteria from July 1, 1986 to the present.

You have asked:

Is the department's investigative file concerning the outbreak of the disease shigellosis confidential under authority of section 3.06 of article 4419b-1, V.T.C.S., and section 3(a)(1) of the Texas Open Records Act, article 6252-17a, V.T.C.S.?

Section 3(a)(1) prohibits governmental bodies from, inter alia, disclosing information deemed confidential by statute. Section 3.06 of article 4419b-1, the Communicable Disease Prevention and Control Act, provides:

Reports of diseases furnished to the health authority [as defined in section 1.04(5) of the act] or the department 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.

You question whether the department's investigative file is among the "reports of disease" to which section 3.06 of article 4419b-1 refers.

Sections 3.01 through 3.05 of article 4419b-1 impose requirements designed to control the spread of communicable disease in this state. In particular, sections 3.03 through 3.05 require certain parties to report cases of suspected communicable disease to designated authorities. Section 3.06 follows these reporting requirements.

In Open Records Decision No. 407 (1984), we said that section 3.06 "states that reports required by section 3.03 et seq. are not public information." In so stating, we indicated, without explicitly holding, that section 3.06 does not embrace investigative reports prepared by a health authority or by the department after it receives a report submitted under sections 3.03 through 3.05, but covers only the reports required by those three sections. We now conclude that this is the proper interpretation of section 3.06.

Four reasons compel this conclusion. First, the fact that the confidentiality provisions of section 3.06 immediately follow the reporting requirements of sections 3.03 through 3.05 suggests a firm link between these provisions and requirements. Second, section 3.06 refers to "reports" of disease, indicating that the section contemplates only the submissions required by the preceding sections, which also use the term "reports." Third, the phrase "reports of disease" appears twice in section 3.06, and the first time it appears it is followed by the words "furnished to the health authority or to the department." This reinforces the conclusion that the section was intended to reach only those reports to which sections 3.03 through 3.05 refer, which must be given either to health authorities or to the department. Finally, the subject of investigative reports is dealt with in section 3.07 of the act, which follows section 3.06. This also bolsters the conclusion that section 3.06 applies only to the reports required by the preceding sections, and not to the investigative report required by section 3.07.

There are logical reasons why the legislature would have wanted to limit the scope of section 3.06 to the reports required by sections 3.03 through 3.05. It may have felt that people would be reluctant to report cases of suspected communicable disease -- even though required to do so by those sections -- if they knew that their identities would be subject to public disclosure. For these reasons, the legislature

stated that "information contained in the reports of disease may be used for statistical and epidemiological studies . . . as long as an individual is not identifiable."

For the foregoing reasons, we conclude that section 3.06 of article 4419b-1 makes "confidential" only those reports required by sections 3.03 through 3.05, and does not reach investigative reports required by section 3.07. If the department's investigative file or report contains information within the scope of sections 3.03 through 3.05, that information must be excised from the file or report and withheld. The details of the actual investigation are not within the scope of section 3.06. We note that you have not asked, and we therefore do not consider, whether an investigative report may be withheld under any other exception in the act. See, e.g., Open Records Decision Nos. 325, 321 (1982) (attorney general does not consider exceptions not raised by governmental bodies). Finally, this report does not identify individual victims of the disease. Therefore, we need not address the common law privacy implications of this report, if any. See Industrial Foundation of the South v. Texas Industrial Accident Board, 540 S.W.2d 668, 685 (Tex. 1976).

Very truly yours,



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