



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

January 6, 1989

Nanette G. Williams
Assistant City Attorney
2 Civic Center Plaza
El Paso, Texas 79999

Dear Ms. Williams:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 4976; this decision is OR89-007.

Under the Open Records Act, all information held by governmental bodies is open unless the information falls within one of the act's specific exceptions to disclosure. The act places on the custodian of records the burden of proving that records are excepted from public disclosure. If a governmental body fails to claim an exception, the exception is ordinarily waived unless the information is deemed confidential under the act. See Attorney General Opinion JM-672 (1987). The act does not require this office to raise and consider exceptions that you have not raised.

You received a request for an Emergency Medical Services (EMS) or police report concerning an individual who is suspected of drug use. You made page one of the patient's record available, but you withheld page two claiming that it may be protected under section 3 (a)(1) of the Open Records Act.

Section 3 (a)(1) of the Open Records Act protects from required disclosure:

information deemed confidential by law,
either Constitutional, statutory, or by
judicial decision.

Your letter refers to the Constitutional and common-law privacy aspects of section 3 (a)(1).

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Medical information relating to drug overdose, acute alcohol intoxication, obstetrical/gynecological illness, and emotional/mental distress may be withheld. Open Records Decision Nos. 370 (1983); 262(1980). Accordingly, page two of the information you submitted for review may be withheld.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR89-007.

Yours very truly,

*Open Government Section
of the Opinion Committee*

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of the Opinion Committee
Prepared by Jennifer S. Riggs
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JSR/SB/bra

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Ref: ID# 4976