



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

July 7, 1989

Robert Bernstein, M.D., F.A.C.P.  
Commissioner of Health  
Texas Department of Health  
1100 West 49th Street  
Austin, Texas 78756-3199

Dear Dr. Bernstein:

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# 6743; this decision is OR89-194.

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.

While investigating the operation of its Women, Infants, and Children (WIC) Nutritional Program in Laredo and Webb County, a Texas Department of Health investigator received an unsolicited letter from a doctor with the Laredo-Webb County Health Department (LWCHD). The letter, which served as a letter of resignation, contained allegations against another LWCHD doctor, who now seeks a copy of the letter. You contend that the letter may be withheld pursuant to section 3(a)(3) of the Open Records Act because the doctor against whom the allegations were made is contemplating a defamation suit against the writer of the letter.

Section 3(a)(3) of the Open Records Act, known as the litigation exception, excepts from required public disclosure:

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection. (Emphasis added.)

Section 3(a)(3) protects information pertaining to litigation in which an employee of the governmental body is, or may be a party. A telephone call from this office to LWCHD confirmed, however, that the doctor who wrote the letter is no longer employed there. In this instance, therefore, section 3(a)(3) is inapplicable. Further, even if the doctor were still employed at LWCHD, the contemplated lawsuit is apparently against him as an individual, not as a public employee. Because you raise no other exception to required public disclosure, you must release the letter.

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 OR89-194.

Yours very truly,

*Open Government Section  
of the Opinion Committee* 

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of the Opinion Committee  
Prepared by Jennifer S. Riggs  
Chief, Open Government Section

JSR/RWP/bc

cc: Jose Gonzales, P.E., M.P.H.  
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Ref.: ID# 6743