



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

July 13, 1989

Ms. Nancy O'Neill
Assistant General Counsel
Litigation Section
Texas Department of Human Services
P. O. Box 149030
Austin, Texas 78714-9030

Dear Ms. O'Neill:

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# 6720; this decision is OR89-203.

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.

The Texas Department of Human Services received a request from a volunteer "big sister" to a child for all records that mention the volunteer directly or indirectly. You claim that sections 3(a)(1) and 3(a)(11) of the act protect the information from required public disclosure.

Section 3(a)(1) protects

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

Section 3(a)(1) protects information deemed confidential by
statutes.

Ms. Nancy O'Neill
July 13, 1989
Page 2

Section 34.08 of the Texas Family Code provides:

The reports, records, and working papers used or developed in an investigation made under this chapter are confidential and may be disclosed only for purposes consistent with the purposes of this code under regulations adopted by the investigating agency.

The records at issue are not public. See Open Records Decision Nos. 440 (1986); 176 (1977). Because section 3(a)(1) of the Open Records Act in conjunction with section 34.08 of the Family Code applies, this decision does not address the other grounds you claim.

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 OR89-203.

Yours very truly,

*Open Government Section
of the Opinion Committee* 

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

JSR/bc

Ref.: ID# 6720

Enclosures: ORD-440
ORD-176