THE ATTORNEY GENERAL
OF TEXAS

August 14, 1989

JIM MATTOX
ATTORNEY GENERAL

Robert Bernstein, M.D., F.A.C.P.
Commissioner
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# 6090; this decision is OR89-244.

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 Health (the department) received the following request for records concerning radioactive waste disposal facilities in Texas:

> 1) the name, address, and contact number of the person or entity;
>
> 2) the types and amounts of waste and material produced or handled;
>
> 3) the person or entity's methods of producing, handling or disposing of radioactive waste and material; and
>
> 4) the inspection or monitoring of the person or entity by your office, including, but not limited to, all forms or reports

> provided to your office by the person or entity, or created by your office concerning the person or entity.

Your letter, dated April 3, 1989, explains: "[t]he files constitute about 1,200,000 pieces of paper and an additional six cubic feet of microfilm. . . . The files will have to be examined to determine if there are any 'trade secrets', geological or geophysical information and data, or records deemed confidential by law, either constitutional, statutory or by judicial decision." You further allege that the information is not maintained in the "form requested" and ask whether the Open Records Act requires that the department perform research to extract and compile the requested information.

The Open Records Act does not require governmental bodies to create or prepare new information. Attorney General Opinion JM-672 (1987); Open Records Decision No. 452 (1986). Nor does the act require the preparation of information in the form requested by a member of the public. Open Records Decision No. 145 (1976). Consequently, the act does not require the department to prepare the waste disposal records in a specific format. The department must, however, provide copies of public records. You indicate that the department has records responsive to this request.

The Texas Supreme Court resolved the issue of whether a voluminous request that requires extensive editing is a "valid" request. See Industrial Found. of the South v. Texas Indus. Accident Bd., 540 S.W.2d 668, 687 (Tex. 1976), cert. denied, 430 U.S. 930 (1977). The court held:

> It is our opinion that the Act does not allow either the custodian of records or a court to consider the cost or method of supplying requested information in determining whether such information should be disclosed.

Id. Consequently, the fact that compliance with this request might be burdensome does not relieve the department of its legal duty to comply.

You contend that to extract and compile the requested information from the department's records constitutes "research" not contemplated or required by the Open Records Act. See V.T.C.S. art. 6252-17a, § 3(d); see also Open Records Decision No. 87 (1975) (the act does not require independent analysis, evaluation, or summary of information in response to a request for public information). Section

3(d), however, provides that the act does not require "general research within the reference and research archives and holdings of state libraries." This provision does not apply here.

The act requires that public records must be produced "promptly," unless the information is in active use, and that governmental bodies "may promulgate reasonable rules of procedure by which public records may be inspected efficiently, safely, and without delay." V.T.C.S. art. 6252-17a, §§ 4, 5, 13. You suggest that the department be permitted to make the records available a few at a time, or release all of records after a period necessary to examine and remove all confidential information. Although a governmental body may take reasonably necessary time to compile requested information, please note that the act prohibits unreasonable delays in providing public records. What constitutes a reasonable period of time depends on the facts in each case. Open Records Decision No. 467 (1987). The volume of information requested is relevant to what constitutes a reasonable period of time. Id.

Given the vast amount of information involved and because of the general nature of your questions, you have not submitted documents for review by this office. If you wish to withhold access to specific documents, you must submit representative copies of them to this office for review in accordance with section 7(a) of the act. See Open Records Decision No. 325 (1982). Information in the department's "public files" area must be released immediately, if it has not been released already.

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 OR89-244.

Yours very truly,

Open Government Section
of the Opinion Committee

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

JSR/FAF/bc

Ref.: ID# 6090

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