



**THE ATTORNEY GENERAL
OF TEXAS**

August 15, 1989

**JIM MATTOX
ATTORNEY GENERAL**

Mr. A. W. Pogue
Commissioner
State Board of Insurance
1110 San Jacinto
Austin, Texas 78701-1998

Dear Mr. Pogue:

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# 7076; this decision is OR89-247.

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 State Board of Insurance (SBI) received an open records request for documents pertaining to an SBI investigation of the M-K-T Railroad Employees Hospital Association. You released to the requestor all of the requested documents except for two notes written by the investigator "for his own use." You contend that section 3(a)(11) of the Open Records Act protects the notes from required public disclosure.

Section 3(a)(11) excepts inter-agency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity's executive deliberative process. See Open Records Decision No. 464 (1987). The notes in question contain no information protected by section 3(a)(11); they must, therefore, be released.

Mr. A. W. Pogue
August 15, 1989
Page 2

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 OR89-247.

Yours very truly,

Open Government Section
of the Opinion Committee

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Approved by Jennifer S. Riggs
Chief, Open Government Section

JSR/RWP/bc

Ref.: ID# 7076

cc: Mr. Jim Shawn
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