



**THE ATTORNEY GENERAL  
OF TEXAS**

August 16, 1989

**JIM MATTOX  
ATTORNEY GENERAL**

Honorable Kathryn J. Whitmire  
Mayor, City of Houston  
P. O. Box 1562  
Houston, Texas 77251-1562

Dear Ms. Whitmire:

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, received on June 28, 1989, was assigned ID# 6815; this decision is OR89-258.

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 Houston Health Department received several requests for copies of records concerning animal vaccinations and licenses. You indicate that, in the past, the city has treated these records as public. Several members of the Houston City Council, however, expressed concern about releasing the records. You ask whether sections 3(a)(1), 3(a)(4), and/or 3(a)(10) protect the records from required disclosure.

Section 3(a)(1) protects information deemed confidential by law, including statutes. You ask whether section 2A of article 7465a, V.T.C.S., creates a "veterinarian client-patient privilege" that provides authority for withholding these records.

Section 2A of article 7465a provides:

A veterinarian-client-patient relationship exists if:

(1) a veterinarian assumes responsibility for medical judgments regarding the health of

an animal and a client who is the owner or other caretaker of the animal agrees to follow the veterinarian's instructions; or

(2) a veterinarian, through personal examination of an animal or a representative sample of a herd or flock, obtains sufficient information to make at least a general or preliminary diagnosis of the medical condition of the animal, herd, or flock, which is expanded through medically appropriate visits to the premises where the animal, herd, or flock is kept.

You apparently suggest that this section makes the requested records "confidential by law."

Statutory confidentiality under section 3(a)(1) must be express. Most statutes that make information exempt from public disclosure under section 3(a)(1) include the term "confidential," see, e.g., Open Records Decision Nos. 351, 347 (1982); 276 (1981), and expressly state that specific information should not be released to the public. See, e.g., Open Records Decision No. 190 (1978). Some statutes make information confidential within the meaning of the section by using the term "privileged." See Open Records Decision No. 290 (1981); see also Open Records Decision No. 521 (1989). The statute at issue here uses neither the term "confidential" nor the term "privileged." Section 2A of article 7465a does not designate as confidential the records of animal vaccinations and licenses. Consequently, the records at issue may not be withheld under section 3(a)(1) in conjunction with section 2A of article 7465a.

You also claim the protection of section 3(a)(4). Section 3(a)(4) of the Open Records Act protects from required public disclosure

information which, if released, would give advantage to competitors or bidders.

The primary purpose of section 3(a)(4) is to protect the government's purchasing interest by preventing a competitor or bidder from gaining an unfair advantage over other competitors or bidders. The test for determining whether section 3(a)(4) applies is whether there has been a showing of some specific actual or potential harm in a particular competitive situation. A general allegation or a remote possibility that an unknown competitor might gain an advantage by disclosure is not sufficient to invoke section 3(a)(4). Open Records Decisions No. 463 (1987). Section

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3(a)(4) is generally invoked to except information submitted to a governmental body as part of a bid or similar proposal. Section 3(a)(4) does not apply to records of animal vaccinations and licenses.

You also suggest that section 3(a)(10) applies. Section 3(a)(10) excepts

trade secrets and commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision.

Section 3(a)(10) is designed to protect third-party interests in information that has been protected from disclosure by statute or by the courts.

Commercial or financial information is excepted under section 3(a)(10) if disclosure of the information is 1) likely to impair the government's ability to obtain necessary information in the future or 2) to cause substantial harm to the competitive position of the person from whom the information was obtained. Apodaca v. Montes, 606 S.W.2d 734, 736 (Tex. Civ. App. - El Paso 1980, no writ); Open Records Decision Nos. 406 (1984); 309 (1982). As with trade secrets, the determination of whether commercial or financial information is excepted depends on the facts in a particular case. Section 3(a)(10) does not protect information submitted by veterinarians to the city about animal vaccinations and licenses.

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 OR89-258.

Yours very truly,

*Open Government Section*  
*of the Opinion Committee*

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JSR/bc

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