



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

November 17, 1989

Mr. Phil A. Lohec, CPA
Galveston County Auditor
P.O. Box 1418
Galveston, Texas 77553

Dear Mr. Lohec:

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# 6595; this decision is OR89-376.

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. Attorney General Opinion H-436 (1974). 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 Galveston County Auditor received an open records request for the findings of the auditor's investigation of a county-owned hospital that waived payment of an individual's hospital bill. You indicate that although much of the requested information is clearly public, you are concerned that particular references in the audit to the medical treatment the patient received are protected from public disclosure by article 5561h, V.T.C.S., and by the common-law privacy aspect of section 3(a)(1) of the Open Records Act.

This office agrees that the portions of the audit that reveal the diagnosis, evaluation or medical treatment of a patient treated for mental or emotional disorders comes within the protection of privacy rights. See, e.g., Open Records Decision Nos. 370 (1983); 314 (1982). We have marked those portions of the audit that you must withhold. Because article 5561h does not apply to any portion of the

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audit not protected by section 3(a)(1) of the Open Records Act, you must release the remaining information, including amounts paid for services. See Open Records Decision No. 385 (1983) (public hospital's accounts receivable information, including patients' names, account numbers, and amounts owed is public information).

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 OR89-376.

Yours very truly,

**Open Government Section
of the Opinion Committee** 

Open Government Section
of the Opinion Committee
Approved by David A. Newton
Assistant Attorney General

DAN/RWP/le

Ref.: ID# 6595
ID# 6695

Enclosure: marked documents

cc: Cathy Gillentine
Texas City Sun News
P.O. Box 2249
Texas City, Texas 77592