



THE ATTORNEY GENERAL  
OF TEXAS

JIM MATTOX  
ATTORNEY GENERAL

November 28, 1989

Mr. Robert E. Luna  
Law Offices of Earl Luna, P.C.  
For Richardson Independent School District  
4411 N. Central Expressway  
Dallas, Texas 75205

Dear Mr. Luna:

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# 7884; this decision is OR89-405.

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 Richardson Independent School District (RISD) received an open records request for "copies of all letters of inquiry and/or complaints from RISD employees regarding the provision of insurance benefits by Equicor Health Plan, Inc." This office previously ruled that other letters of inquiry and complaint must be released to the requestor; you now submit other letters that you believe are within the ambit of the open records request and inquire whether any portions of these letters may be withheld pursuant to section 3(a)(1), (a)(2), or (a)(14) of the Open Records Act.

Section 3(a)(1) of the act protects "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." The Texas Medical Practice Act, article 4495b, V.T.C.S., provides:

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Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

V.T.C.S. art. 4495b, § 5.08(b). We have marked one document that you must withhold pursuant to article 4495b. You must, however, release invoices reflecting charges and specific services rendered; this type of information is excepted from the confidentiality provisions of section 5.08(b). See Id. § 5.08(h)(4).

Section 3(a)(1) also protects the common-law right to privacy. Industrial Found. of the South v. Texas Indus. Accident Bd., 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 930 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and it is of no legitimate concern to the public. Id. at 683-85. We have marked portions of the letters that meet these tests; you must withhold this information.

Finally, we note that section 3(a)(14) of the Open Records Act protects only "student records at educational institutions." Although the requested documents contain the name of a school-aged child, the records at issue are not "student records." Section 3(a)(14) is therefore inapplicable here. You must release all of the records submitted to this office except for the information that we have marked as excepted from required public disclosure.

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 OR89-405.

Yours very truly,

*Open Government Section  
of the Opinion Committee*  
Open Government Section  
of the Opinion Committee  
Approved by David A. Newton  
Open Government Section

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Ref.: ID# 7884  
ID# 6792

Enclosures: marked documents

cc: Joe K. Crews  
Crews, Thorpe & Hatcher  
150 Founders Square  
900 Jackson Street  
Dallas, Texas 75202