



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

November 29, 1989

Mr. Bob Hayes
Chief of Police
DeSoto Police Department
P.O. Box 550
DeSoto, Texas 75115

Dear Mr. Hayes:

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# 7675; this decision is OR89-410.

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 City of DeSoto received a request from the Texas Department of Health for information about a specific incident of abuse of an elderly person. You seek guidance on how to respond. You raise no specific exceptions to disclosure of the information; rather, you ask what you can and cannot release. We assume that you are concerned about the privacy of the victim and/or law enforcement interests in withholding information about an ongoing investigation. Your request is not controlled by the Open Records Act.

Even if certain information is not public under the Open Records Act, there are persons and entities to whom information may be released or transferred without waiving the protected status of the information under the act. Transferring information from one governmental agency to another does not destroy the protected character of the information so long as each agency is authorized by law to

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have the information. Attorney General Opinions H-917 (1976); H-242 (1974); Open Records Decision No. 272 (1981); see also Attorney General Opinion H-683 (1975) (transfer of criminal history information). Additionally, if information is provided to persons or entities that possess special rights of access, or rights granted by laws other than the Open Records Act, the act's exceptions to disclosure applicable to the information are not waived. In Attorney General Opinion H-683, this office ruled that the Department of Public Safety could provide criminal history information to the State Bar of Texas and the Department of Public Welfare to assist them in their licensing responsibilities.

Similar considerations apply here. Section 5(b) of article 4442c, V.T.C.S., authorizes the Department of Health to obtain certain information directly from a nursing home. As the licensing agency responsible for investigating the abuse of nursing home residents, the department has the authority and the need to obtain information about the abuse of the elderly. Consequently, the city may provide the information to the department without violating any provision of the Open Records Act.

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 OR89-410.

Yours very truly,

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

JSR/le

Ref.: ID# 7625

cc: Robert L. Elrod
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