



**THE ATTORNEY GENERAL  
OF TEXAS**

JIM MATTOX  
ATTORNEY GENERAL

December 11, 1989

Ms. Mary Ann Courter  
Assistant General Counsel  
Texas Department of Public Safety  
5805 N. Lamar Blvd.  
Box 4087  
Austin, Texas 78773-0001

Dear Ms. Courter:

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# 7660; this decision is OR89-425.

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 Department of Public Safety received a request for copies of triplicate drug prescription forms. The department asserts that section 3(a)(1) of the Open Records Act, in conjunction with section 481.076 of the Health and Safety Code, protects the forms from required public disclosure. We agree.

Moreover, section 3(a)(18) of the Open Records Act excepts from required public disclosure:

information contained on or derived from  
triplicate prescription forms filed with the  
Department of Public Safety pursuant to  
Section 3.09 of the Texas Controlled

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Substances Act, as amended (Article 4476-15,  
Vernon's Texas Civil Statutes).

Finally, we note that the requestor states that he already has obtained the records at issue through civil discovery in a pending lawsuit. He seeks only "legible copies." The fact that the information at issue is protected under the Open Records Act does not mean that it is privileged from discovery. V.T.C.S. art. 6252-17a, § 14(f); Attorney General Opinion JM-1048 (1989). The requestor should seek "legible copies" of the information through discovery in the same manner in which he obtained the other copies.

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 OR89-425.

Yours very truly,

*Open Government Section*  
*of the Opinion Committee* 

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

JSR/le

Ref.: ID# 7660

cc: Mr. Albert P. Creasman  
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