



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

March 20, 1990

Mr. Jeff Hartsell
Assistant City Attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79999

OR90-108

Dear Mr. Hartsell:

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# 8441.

You seek a decision under the Open Records Act, article 6252-17a, V.T.C.S., as to whether the emergency medical service (EMS hereinafter) report of the transfer of a certain patient from a birthing center to a hospital is open to the public. Section 3(a)(1) and the common-law right of privacy were claimed as exceptions to the required disclosure of the report.

The request letter is from an employee of the Texas Department of Health, and it does not refer to the Texas Open Records Act. Confidential information may be transferred between state agencies without violating the law making it confidential. See Attorney General Opinion M-713 (1970). If you send a copy of the EMS report to the Department of Health, you will not be disclosing it to the public and it will retain the same confidentiality under the Open Records Act in the custody of the Department of Health as it does in the custody of the City of El Paso. See Attorney General Opinions H-683 (1975), H-242 (1974). However, since you have asked us to address this question under the Open Records Act, we will do so.

When considering the availability of information in EMS reports, it is necessary to distinguish the kinds of information contained in the report.

In Open Records Decision No. 262 (1980), we said that much of the information in EMS reports is available to the public: incident information such as date, pick-up

location, type of run, person requesting the ambulance; patient information such as name, address, age, gender; and ambulance information such as the names of the driver and attendant and their levels of training. However, certain information in the EMS report is excepted by a constitutional or common-law right of privacy, e.g., information about a patient's illness or injury, if it relates to a drug overdose, acute alcohol intoxication, obstetrical/gynecological illness, convulsions/seizures, or emotional/mental distress. See Open Records Decision No. 262. Where an EMS report contains relatively little detail, it is necessary to determine whether it reveals such highly intimate or embarrassing facts about a person that its disclosure would be objectionable to a person of ordinary sensibilities. See Industrial Found. of the South v. Texas Indus. Accident Bd., 540 S.W.2d 668 (Tex. 1976) cert. denied, 430 U.S. 930 (1977); Open Records Decision No. 258 (1980).

The EMS reports at issue are related to childbirth, one of the constitutional zones of privacy recognized in Roe v. Wade, 410 U.S. 113 (1973), and Industrial Foundation, supra. In Open Records Decision No. 237 (1980), EMS reports of the transport to a hospital of a person who had given birth under the care of lay midwives were found to be within the ambit of section 3(a)(1) of the Open Records Act and the common-law and constitutional right of privacy. For this reason, you may withhold information that relates to the obstetrical treatment of the patient. Incident information, ambulance information, and other patient information such as name, address, age and gender, as discussed in Open Records Decision No. 262, may properly be disclosed. As we have pointed out, you may disclose the report in its entirety to the Department of Health for its official purposes.

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 OR90-108.

Yours very truly,



Kay H. Guajardo
Assistant Attorney General
Opinion Committee

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Enclosure: Open Records Decision No. 237
Attorney General Opinions M-713; H-242; H-683

cc: Lynn P. AbuMari, RN, MN
Specialist, Nursing
Licensure and Certification Division
Texas Department of Health
2561 Matlock Road
Arlington, Texas 76015-1621