



**THE ATTORNEY GENERAL
OF TEXAS**

JIM MATTOX
ATTORNEY GENERAL

October 11, 1990

Robert Bernstein, M.D., F.A.C.P.
Commissioner of Health
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-7111

OR90-484

Dear Dr. Bernstein:

You ask whether certain information in the possession of the Department of Health (the "department") is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 9201.

The requestor seeks "a copy of the complaint filed with your department with regard to the Casa of Care." The information submitted for our inspection as responsive to this request consists of a memorandum of a report received by the department from another state agency.

We have considered the exceptions you claimed, specifically sections 3(a)(1) and 3(a)(11), and have reviewed the documents at issue. Section 6 of the Open Records Act does not except any information from required public disclosure. Neither does it limit the meaning of the other sections of the Act. Open Records Decision No. 460 (1987). Therefore we do not consider your claims for exception under section 6(1).

Section 3(a)(1) excepts from public disclosure information deemed confidential by law. In this respect, you cite section 48.083 of the Human Resources Code. Section 48.083 of the Human Resources Code makes confidential records "pertaining to an elderly or disabled person who is protected under this chapter or for whom an application for protection has been made." The requested information does not pertain to any specific or identifiable individual. Accordingly, section 48.083 of the Human Resources Code appears inapposite to the requested information.

You further assert that the requested information is excepted from required public disclosure by the informer's

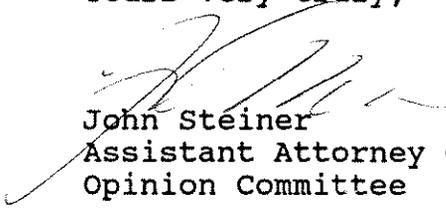
privilege as incorporated in the Open Records Act by section 3(a)(1). See, e.g., Open Records Decision Nos. 549 (1990); 515 (1988). The informer's privilege serves to encourage the flow of information to the government by protecting the identity of the informer. If the contents of the informer's statement would tend to reveal the identity of the informer, the privilege protects the statement itself to the extent necessary to preserve the informer's anonymity. Moreover, the basis for the informer's privilege is to protect informers from the fear of retaliation and thus encourage them to cooperate with law enforcement efforts. Id.

We are concerned here with a record of a communication between state agencies, not a report from a citizen informant. The recorded statements were made by a state employee acting in the scope of employment. The informer's privilege is not applicable in this situation.

Finally, section 3(a)(11) protects advice, opinion, or recommendation used in the deliberative process within an agency or between agencies. See, e.g., Open Records Decision No. 549. The last two numbered items on the document submitted for our inspection, items (4) and (5), appear to essentially record recommendations for appropriate future action. Accordingly these items may be withheld. The balance of the document must be released.

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 OR90-484.

Yours very truly,


John Steiner
Assistant Attorney General
Opinion Committee

JS/le

Ref.: ID# 9201

cc: Papa Bear, President
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