



**Office of the Attorney General
State of Texas**

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ATTORNEY GENERAL

March 18, 1992

Robert A. MacLean, M.D.
Acting Commissioner
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

Open Records Decision No. 603

Re: Whether an individual has a right under section 3B of the Open Records Act to inspect information about himself in the records of a Department of Health investigation of a complaint against a home health services agency (RQ-91)

Dear Dr. MacLean:

Your predecessor in office requested an opinion from this office as to whether an individual has a right under section 3B of the Texas Open Records Act, article 6252-17a, V.T.C.S., to inspect information about himself in the records of a Department of Health (department) investigation of a complaint against a home health services agency. The parents of a minor child whose treatment was the subject of such an investigation have requested the investigative report.

Chapter 142 of the Health and Safety Code authorizes the department to license and regulate home health agencies. Section 142.009 directs the department to investigate "each" complaint about such agencies; subsection (d) of section 142.009 provides that "[t]he reports, records, and working papers developed in an investigation made under this section are confidential." In Open Records Decision No. 507 (1988), this office found that information within former V.T.C.S. article 4447u, section 10(d), now Health and Safety Code section 142.009(d), was excepted from public disclosure by section 3(a)(1) of the Open Records Act, which excepts from disclosure information deemed confidential by law, whether statutory, constitutional, or by judicial decision. You ask whether the addition of section 3B to the Open Records Act modifies Open Records Decision No. 507 to allow access to section 142.009 records by a person, or an authorized representative of a person, to whom the records relate. We conclude that it does not.

Section 3B of the Open Records Act was added in 1989, Acts 1989, 71st Leg., ch. 1248, § 10, at 5025, to make clear that a governmental body could not deny an individual or her authorized representative access to information on the basis of law

intended solely to protect the privacy of that individual. Thus, section 3B provides in subsection (a):

A person or the authorized representative of a person has, beyond the right of the general public, a special right of access to and to copies of any records held by a governmental body that contain information relating to the person that *is protected from public disclosure by laws intended to protect that person's privacy interests*. The fact that the information is deemed confidential by privacy principles under this Act does not grant the governmental body the right to deny access to the person, or the person's representative, to whom the information relates. *However, laws and provisions of this Act, other than ones intended to protect that person's privacy interests, may still form the basis for denial of access to the person or the person's representative to whom the information relates.* (Emphasis added.)

In Open Records Decision No. 587 (1991), this office considered the application of section 3B to records of a child abuse investigation that were confidential under section 34.08(a) of the Family Code. As we stated in that decision, "where information is withheld from public disclosure pursuant to laws intended to protect more than privacy interests, section 3B may not be invoked." Open Records Decision No. 587 at 3. We then concluded that because the confidentiality provision protected law enforcement interests as well as the privacy of the individuals concerned, section 3B was not applicable to the information requested. Similarly, we conclude that section 142.009(d) is intended to protect more than privacy interests.

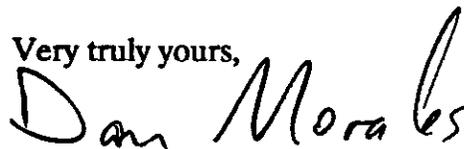
It seems clear to us that section 142.009(d) is designed to protect the integrity of the department's investigatory process as well as to protect the privacy interests of individuals. *See* Open Records Decision No. 587. As we determined in Open Records Decision No. 507, the provision here is "a comprehensive confidentiality provision, and nothing in its language suggests that a patient has any right to see information concerning him in the records of an investigation, nor that the department has any power to make this information available to him." Open Records Decision No. 507 at 3. Nothing in the statute indicates that privacy protection was the sole concern of the drafters; if anything, the lack of an exception to the confidentiality provision for individuals giving written consent to the release of information concerning themselves militates against such a conclusion. *See* Open Records Decision No. 507; *cf.* Open Records Decision No. 577 (1990) (applying

section 3B to information within Health and Safety Code section 81.046). We therefore determine that an individual may not invoke section 3B of the Open Records Act to gain access to records made confidential under Health and Safety Code section 142.009(d). Accordingly, the information requested in this case may not be released.

SUMMARY

Section 3B of the Open Records Act does not affect the availability of information developed in a Department of Health investigation of complaints about a home health agency under Health and Safety Code section 142.009. Such information is confidential under Health and Safety Code section 142.009(d) and excepted from public disclosure under Open Records Act section 3(a)(1).

Very truly yours,



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