



DAN MORALES  
ATTORNEY GENERAL

Office of the Attorney General  
State of Texas

February 26, 1991

Dr. Robert Bernstein, M.D.  
Commissioner of Health  
Texas Department of Health  
1100 West 49th Street  
Austin, Texas 78756-3199

OR91-112

Dear Dr. Bernstein:

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# 10015.

The Texas Department of Health [hereinafter the department] received an open records request for information about seven victims of the measles epidemic in Dallas, specifically, the dates of birth and death of each victim, the cause of death, and the name of the hospital in which each one died. You rely on two sections of the Open Records Act as authority to withhold the requested information.

You contend that the information about the cause of death of the victims is excepted from required public disclosure by section 3(a)(15). You inform us that this information is found on the department's official certificate of death maintained by the department's Bureau of Vital Statistics. Section 3(a)(15) protects

birth and death records maintained by the Bureau of Vital Statistics of the Texas Department of Health, except that:

. . . .

(B) a death record is public information and available to the public on and after the 25th anniversary of the date on which the record is filed with the Bureau of Vital Statistics or local registration official.

Therefore, section 3(a)(15) restricts access to birth and death certificates or official records only until the time stipulated above. This information is only restricted to the extent it is contained on the official certificate; it does not apply to lists of births and deaths. Open Records Decision No. 486 (1987). The information about the cause of death of each measles victim may only be withheld based on section 3(a)(15) of the Open Records Act to the extent that the information is contained on the actual birth and death certificate or official record.

You assert the other items of requested information are protected from required public disclosure by section 3(a)(1) of the Open Records Act, which excepts "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." You rely on section 81.046 of the Health and Safety Code which provides in pertinent part:

(a) Reports, records, and information furnished to a health authority or the department that relate to cases or suspected cases of diseases or health conditions are confidential and may be used only for the purposes of this chapter.

(b) Reports, records, and information relating to cases or suspected cases of diseases or health conditions are not public information under Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), and may not be released or made public on subpoena or otherwise except as provided by Subsections (c) and (d).

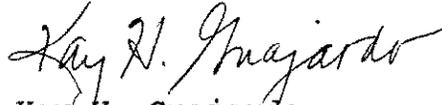
(The exceptions in subsections (c) and (d) are not pertinent to this decision.)

The requested information is in your possession, you say, because local public health officials who are conducting an investigation of the epidemic are sending reports pursuant to chapter 81, subchapter C, of the Communicable Disease Prevention and Control Act. Section 81.043 of the Health and Safety Code, requires a health authority or regional director to report reportable diseases to the department. This office determined that the predecessor statute to section 81.046, article 4419b-1, section 3.06, V.T.C.S., protects reports required by section 3.03 through 3.05 of article 4419b-1 (now codified as sections 81.042

through 81.045, Health and Safety Code). Open Records Decision No. 442 (1986); see also Open Records Decision No. 407 (1984). We find that the requested information, contained as it is in the reports submitted to the department under the authority of section 81.043 of the Health and Safety Code, is made confidential by section 81.046 of the Health and Safety Code. Accordingly, it is our decision that you may withhold the requested information.

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 OR91-112.

Yours very truly,



Kay H. Guajardo  
Assistant Attorney General  
Opinion Committee

KHG/lcd

Ref.: ID# 10015

Enclosure: Open Records Decision No. 442, 486