



DAN MORALES  
ATTORNEY GENERAL

Office of the Attorney General  
State of Texas

August 12, 1991

Burton F. Raiford  
Interim Commissioner  
Texas Department of Human Services  
P.O. Box 149030  
Austin, Texas 78714-9030

OR91-367

Dear Mr. Raiford:

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# 12807.

The Texas Department of Human Services received an open records request for "Texas Medicaid Drug Utilization" data. The request was made by a pharmaceutical market research company. You contend that the records of the Vendor Drug Program come under the protection of section 3(a)(1) of the Open Records Act.

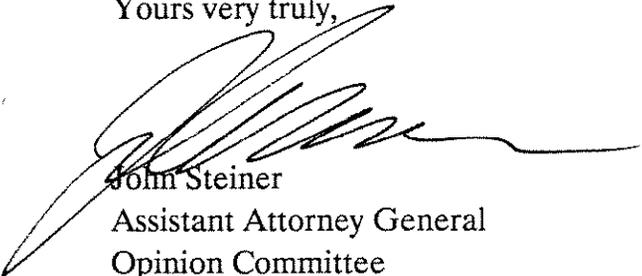
Section 3(a)(1) excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." You claim the exception pursuant to statutory confidentiality. Specifically, you rely on federal law which states:

notwithstanding any other provision of law, information disclosed by manufacturers or wholesalers under this paragraph is confidential and shall not be disclosed by the Secretary or a State agency. . . in a form which discloses the identity of a specific manufacturer or wholesaler, [or] prices charged for drugs by such manufacturer or wholesaler.

42 U.S.C. § 1396r-8(b)(3)(D). It is well established that a federal statute can provide statutory confidentiality for purposes of section 3(a)(1) of the Open Records Act. *See* Open Records Decision No. 476 (1987). Therefore, the requested information may be withheld if, as you assert, the Drug Code Number and Drug Description reveal the identity of the drug manufacturer.

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 OR91-367.

Yours very truly,



John Steiner  
Assistant Attorney General  
Opinion Committee

JS/RG/lb

Ref.: ID# 12807

Enclosure: documents; Open Records Decision No. 476.

cc: Richard C. Zeich  
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