



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 29, 1991

Mr. Fred S. Brinkley, Jr., R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
8505 Cross Park Drive, Suite 110
Austin, Texas 78754-4594

OR91-530

Dear Mr. Brinkley:

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# 13862.

You have received three requests for information relating to complaints filed with the Texas State Board of Pharmacy (the board). Specifically, the request seeks three categories of information: (1) the work history, complaints or reprimands, past work history, and personal information of a certain pharmacist; (2) complaint information relating to a certain pharmacy licensed with the board; and (3) any complaint information relating to a certain chain of pharmacies. You assert that the requests are both "specific" and "global." You advise us that you have disclosed information responsive to the specific requests, but that the "global" requests are overly burdensome" and will require the agency to develop a special computer program for purposes of compiling the requested information. You ask whether you may require the requestor to narrow her request and to pay the costs of producing the requested information prior to production.

You have not indicated whether you claim any exceptions to required public disclosure as provided by section 3(a) of the Open Records Act. Indeed, you state that "[t]he agency asks these questions not in an attempt to block the provision of open records information to the public." The custodian of records has the burden of proving that records are excepted from public disclosure and of indicating which information is to be excepted. Attorney General Opinion H-436 (1974). If a governmental body does not claim an exception or fails to show how it applies to the

records, it will ordinarily waive the exception unless the information is deemed confidential by the act. *See* Attorney General Opinion JM-672 (1987). Accordingly, unless the requested information is made confidential by law or unless you can present a compelling argument within 14 days of receipt of this letter as to why the requested information should be withheld, it must be released.

While in your letter you do not claim any specific exceptions under the Open Records Act, you suggest that the overly broad or "global" nature of the requests may limit your duty to respond. Previous open records decisions address your concerns. When a governmental body is presented with a broad request for information rather than for specific records, it should advise the requestor of the types of information available so that he may narrow his request. Open Records Decision Nos. 563 at 7, 561 at 8-9 (1990). Whether or not the requestor narrows his request, the Open Records Act generally does not permit the custodian of records to consider either the cost or the method of supplying requested information. Open Records Decision No. 467 (1987) at 5. However, if the requestor fails to narrow the request for information, the custodian may require the requestor to post bond as a condition precedent when the preparation of requested information is unduly costly and reproduction would cause "undue hardship" if costs were not paid upfront. V.T.C.S. art. 6252-17a, § 11; Open Records Decision No. 467 at 6-7. If the custodian does not require the requestor to post bond, the custodian may charge the requestor after the request has been fulfilled. An agency may charge a requestor that seeks information in computer record banks "all costs related to providing the record, including costs of materials, labor, and overhead." V.T.C.S. art. 6252-17a, § 9(b). Furthermore, if the public information the requestor seeks is intertwined with confidential information, or if the records custodian must conduct an extensive physical search to sort out confidential records, the custodian may charge the requestor for materials, overhead, and labor necessary to delete or separate the confidential information. Open Records Decision No. 488 (1988).

Please note, also, that the Open Records Act does not require a governmental body to make available information that does not exist, Open Records Decision No. 362 (1983), nor does it require a governmental body to prepare or compile information in a form or manner requested by the public. Open Records Decision No. 467. Additionally, the Open Records Act does not require a complex computer search to create new information. Attorney General Opinion No. JM-672.

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 OR91-530.

Yours very truly,



Kym Oltrogge
Assistant Attorney General
Opinion Committee

KO/GK/mc

Ref.: ID# 13862

cc: Ms. Deloris Harmon
4595 Frierson Road
College Station, Texas 77845

Laverna Lakey, R.Ph. 14712
Box 247
San Angelo, Texas 76902

Chuck Fehlig
Director, Professional Relations
Wal-Mart Stores, Inc.
Pharmacy Operations
702 S.W. 8th Street
Bentonville, Arkansas 72716-0465