



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 20, 1991

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

OR91-582

Dear Dr. MacLean :

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# 13990.

You have received a request for information relating to allegations of poor job performance made against your employees. Specifically, the requestor seeks:

1. A report prepared in August 1991 on allegations of "clearing teams" or the likelihood of certain staff to clear a nursing home of deficiencies more readily than other staff in region V.
2. A report prepared some time between May and September 1991 on intentional wrongdoing in region V or other regions.
3. Any written records of complaints by TDH employees to Juanita Carrell, associate director for special health services, in March, April and June 1991. . . [including] any response or investigation reports of those complaints by Dr. Carrell or other officials within the department of health.

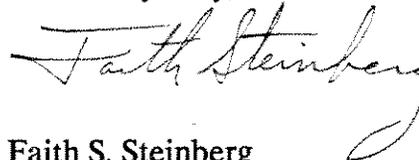
You ask whether the requested information is excepted from required public disclosure by the common-law right to privacy under section 3(a)(1) of the Open Records Act.

Information may be excepted from required public disclosure by common-law privacy interests under section 3(a)(1) when such information meets the privacy test detailed in *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court ruled that common-law privacy excepts only information that 1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person; and 2) is not of legitimate concern to the public. *Id.* at 685.

We have examined the documents submitted to us for review. Allegations concerning the job performance of public employees is clearly of legitimate public concern. *See* Open Records Decision No. 470 (1987). Accordingly, you may not withhold the requested information from required public disclosure under section 3(a)(1).

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 OR91-582.

Yours very truly,



Faith S. Steinberg
Assistant Attorney General
Opinion Committee

FS/GK/lcd

Ref.: ID# 13990

Enclosure: Open Records Decision No. 470

cc: Mr. Lee Hancock, Reporter
The Dallas Morning News
P.O. Box 655237
Dallas, Texas 75265