



Office of the Attorney General
State of Texas

November 19, 1992

DAN MORALES
ATTORNEY GENERAL

Mr. Leonard W. Peck, Jr.
Assistant General Counsel
Texas Department of Criminal Justice
P. O. Box 99
Huntsville, Texas 77342-0099

OR92-659

Dear Mr. Peck:

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# 16925 (your file number OR92-0728-0352).

The Texas Department of Criminal Justice -- Institutional Division received an open records request for certain records that you contend may be withheld from the public pursuant to section 3(a)(3) of the Open Records Act. To secure the protection of section 3(a)(3), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). In this instance, you have made the requisite showing that the requested information relates to pending litigation for purposes of section 3(a)(3); the requested records may therefore be withheld, with the following exception: you must release to the requestor copies of his own medical records at this time. See Open Record Decision No. 598 (1991) (Open Records Act does not govern special rights of access granted by the Medical Practice Act) (copy enclosed).

However, in reaching the conclusion that you may withhold the remaining records pursuant to section 3(a)(3), we assume that the opposing party to the litigation has not previously had access to any of the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, e.g., through discovery or otherwise, no section 3(a)(3) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). If the opposing party in the litigation has seen or had access to any of the information in these records, there would be no justification for now withholding that information from him pursuant to section 3(a)(3).

We also note that because section 3(a)(3) protects only information that is relevant to the litigation, this section is inapplicable to documents that the presiding judge has ruled undiscoverable because they lack relevance to the lawsuit. Finally, the applicability of section 3(a)(3) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

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 OR92-659.

Yours very truly,



Kay H. Guajardo
Assistant Attorney General
Opinion Committee

KHG/RWP/lmm

Ref.: ID# 16925

Enclosure: Open Records Decision No. 598

cc: Mr. Jon L. Johnson
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