



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 30, 1992

David R. Smith, M.D.  
Commissioner of Health  
Texas Department of Health  
1100 West 49th Street  
Austin, Texas 78756-3199

OR92-704

Dear Dr. Smith:

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# 16984.

The Texas Department of Health (the "department") has received a request for various documents concerning reports of the human immunodeficiency virus (HIV) infection among students and teenagers in East Texas. We understand that the only documents remaining in issue here are certain notes of phone messages kept by a departmental official and a departmental letter dated May 13, 1992.<sup>1</sup> You ask whether section 3(a)(1) of the Open Records Act in conjunction with section 81.046 of the Health and Safety Code makes this information confidential.

Section 3(a)(1) excepts "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." V.T.C.S. art. 6252-17a, § 3(a)(1). Section 81.046(a) and (b) requires 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

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<sup>1</sup>In subsequent correspondence or phone calls to us and the requestor, you have explained that you will provide the requestor either access to or copies of the requested phone logs. We also understand that you have provided the requestor copies of the department's human immunodeficiency virus/sexually transmitted disease (HIV/STD) program rules published in title 25 of the Texas Administrative Code. With regard to the requestor's remaining requests, you explain that the department possesses no records or other documents responsive to those requests. The act does not require a governmental body to prepare new information in order to comply with a request. *Economic Opportunities Dev. Corp. of San Antonio v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 561 (1990).

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 . . . [the act] . . . .

This section is a broad confidentiality provision applicable to information relating to reportable diseases "whether received as reports from health professionals or prepared [by the department] in connection with the department's investigation of a disease or health condition." *Open Records Decision No. 577 (1990)* at 5. The documents at issue here are clearly information relating to "cases or suspected cases of diseases or health conditions," and thus they must be withheld from required public disclosure pursuant to section 81.046 of the Health and Safety Code in conjunction with section 3(a)(1) of the act.

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 OR92-704.

Yours very truly,



Celeste A. Baker  
Assistant Attorney General  
Opinion Committee

CAB/HJ/lmm

Ref.: ID# 16984  
ID# 17279  
ID# 17278  
ID# 17291  
ID# 17596  
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ID# 17938  
ID# 17964

Enclosure: Submitted documents