



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 4, 1993

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

OR93-273

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# 19662.

The Women, Infants, and Children ("WIC") program is a federal program that provides nutritional supplements to eligible women, infants, and children who are nutritionally at risk. *See* 42 U.S.C. § 1786. The Department of Health (the "department") is the state agency authorized to administer the program in Texas. *Id.* The department received a request for information relating to the WIC program. Specifically, the request is for "the fiscal monitor, the nutritional monitor, and a copy of the participant sample" generated by the department as part of an investigation and review of the Lubbock Community Health Clinic. You have released to the requestor the fiscal monitor and the nutritional monitor. You contend, however, that the participant sample is excepted from required public disclosure by section 3(a)(1) in conjunction with section 246.26(d) of title 7 of the Code of Federal Regulations, which provides for the confidentiality of information obtained from WIC program applicants.

Section 3(a)(1) excepts from disclosure information deemed confidential by statutory or constitutional law or judicial decision. Section 246.26(d) of title 7 of the Code of Federal Regulations provides:

**Confidentiality.** The State agency shall restrict the use or disclosure of information obtained from program applicants and participants to:

- (1) Persons directly connected with the administration or enforcement of the program, including persons investigating or prosecuting violations in the WIC Program under Federal, State or local authority;
- (2) Representatives of public organizations designated by the chief State health officer . . . which administer health or welfare programs that serve persons categorically eligible for the WIC Program. The

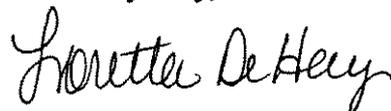
State agency shall execute a written agreement with each such designated organization:

- (i) Specifying that the receiving organization may employ WIC Program information only for the purpose of establishing the eligibility of WIC applicants and participants for health or welfare programs which it administers and conducting outreach to WIC applicants and participants for such programs, and
  - (ii) Containing the receiving organization's assurance that it will not, in turn, disclose the information to a third party; and
- (3) The Comptroller General of the United States for audit and examination authorized by law.

The requestor is not an entity authorized to obtain the information regarding WIC applicants as defined above. Therefore, section 3(a)(1), in conjunction with section 246.26(d) of title 7 of the Code of Federal Regulations, excepts the information from required public disclosure.

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 contact our office.

Yours very truly,



Loretta R. DeHay  
Assistant Attorney General  
Opinion Committee

LRD/KKO/le

Ref.: ID# 19662

Enclosures: submitted documents

cc: Mr. Darren B. Stand  
Ronquillo & DeWolf  
750 N. St. Paul Street, Suite 990  
Dallas, Texas 75201  
(w/o enclosures)

Mr. Joe Fuller  
Office of General Counsel  
Texas Department of Health  
1100 West 49th Street  
Austin, Texas 78756-3199  
(w/o enclosures)