



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 1, 1996

Mr. Ron M. Pigott
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR96-0464

Dear Mr. Pigott:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 39356.

The Texas Department of Public Safety (the "department") received a request for "an opportunity to review and copy all files, records, and any other documents . . . pertaining to Triplicate Prescriptions dispensed by Ernesto A. Cantu, M.D., issued from 1991 to the present." You assert that the requested information is excepted from required public disclosure based on section 552.101 of the Government Code in conjunction with section 481.076 of the Health and Safety Code.

Section 552.101 of the Government Code excepts from required public disclosure information that is deemed confidential by law, including information made confidential by statute. You raise section 481.076(a) of the Health and Safety Code, a provision pertaining to triplicate prescription information, which reads as follows:

(a) The director¹ may not permit any person to have access to information submitted to the Department of Public Safety under Section 481.075 except:

¹ "Director" means the director of the department or a department employee designated by the director. Health & Safety Code § 481.002(11).

(1) investigators for the Texas State Board of Medical Examiners, the Texas State Board of Podiatric Medical Examiners, the State Board of Dental Examiners, the State Board of Veterinary Medical Examiners, or the Texas State Board of Pharmacy; or

(2) authorized officers of the Department of Public Safety engaged in investigation of suspected criminal violations of this chapter who obtain access with the approval of an investigator listed in Subdivision (1).

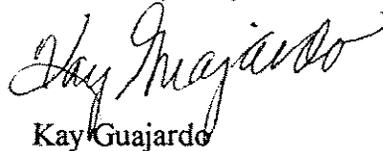
You have not submitted copies of the requested information to this office as section 552.303(a) of the Government Code required you to do. You explain that you did this because section 481.076 of the Health and Safety Code does not authorize the submission of the requested prescription information to this office. You maintain that the Open Records Act "cannot override statutes requiring confidentiality and limiting access to certain people and situations."

We do not agree that the submission of requested information to this office for our review for the purpose of determining the application of an exception to disclosure amounts to overriding section 481.076 of the Health and Safety Code. The legislature entrusts this office with the duty of deciding whether requested information is subject to public disclosure pursuant to the Open Records Act. The fulfillment of that duty requires this office to view the information at issue. This is so even when the information at issue is deemed confidential by law. *See* Open Records Decision 495 (1988) at 3. Moreover, the Open Records Act mandates that a governmental body that seeks an open records decision submit to this office a copy of the specific information requested. Gov't Code § 552.301; 552.303(a), (d). The statute makes no exception for information that is made confidential by law. Nor has this office ever implied a general exception to this requirement when information is made confidential by law. *But see* Open Records Decision No. 495 (1988) (attorney general's office lacks authority to review certified agendas or tapes of executive session to determine whether they are excepted from public disclosure under section 552.101 since Open Meetings Act provisions provide exclusive mechanism for public disclosure by court order).

Lacking the requested information to review, in this case only we will rule by assumption. Assuming the information you seek to withhold is indeed triplicate prescription information referenced in section 481.076 of the Health and Safety Code, such information is deemed confidential by section 481.076 of the Government Code. If this assumption is correct, we conclude that the department must withhold the information from required public disclosure based on section 552.101 of the Government Code. In the future, the department must submit copies or representative samples of the specific requested information in accordance with the procedures for requesting an open records ruling set out in the Open Records Act. *See* Gov't Code § 552.301- .308.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/ch

Ref.: ID# 39356

cc: Ms. Cynthia Hujar Orr, Esq.
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(w/o enclosures)