



Texas Department of Mental Health and Mental Retardation
Central Office

Id # 10317
SG
gcr

P.O. Box 12008 • Austin, Texas 78711-2008 • 512-454-4761

Dennis R. Jones, M.S.W., M.B.A.
Commissioner

RO-84

August 8, 1990

AUG 09 1990
Opinions Committee

Mr. Rick Gilpin
Chair, Opinions Committee
Attorney General of Texas
Supreme Court Building
Austin, Texas 78701

RE: Texas Open Records Act

Dear Mr. Gilpin:

Enclosed please find a copy of an Open Records Request received by the Department on July 30, 1990 from an Austin American Statesman reporter.

It is clear that the statistics requested in paragraph number 4 of the enclosed letter are subject to disclosure under the Act, and they will be provided as soon as they can be gathered.

The documents requested in paragraphs 1, 2 and 3 of the enclosed letter, however, are not, in my opinion, subject to disclosure. The Death Review Committee Report described in paragraph number 1 is the result of a physician peer review process established by the Department and is protected by Section 5.06 of Article 4495b, VTCS, and Section 161.032, Texas Health and Safety Code. The documents are, therefore, specifically excepted from disclosure under Section 3(a)(1) of the Act.

2/2

The documents or tapes requested in paragraph number 2 are part of the physician peer review process noted above and are protected by the same statutory provisions and excepted by the same section of the Act as is the committee report.

The documents requested in paragraph number 3, as well as those requested in paragraphs 1 and 2, relate to pending litigation against the Department (Lelsz v Kavanagh, No. CA-3-85-2462-H, U. S. District Court, Northern District of Texas, Dallas Division). All such documents, if disclosed, would, in my opinion, be detrimental to the state's position in that litigation. It is my further opinion that all such documents are, therefore, specifically excepted from disclosure under Section 3(a)(3) of the Act. You may wish to discuss this matter with Ms. Toni Hunter or Ms. Dona Hamilton, Assistants Attorney General, who represent the Department in the Lelsz litigation.

Mr. Rick Gilpin
August 7, 1990
Page 2

A copy of the Death Review Committee Report and examples of those documents described in paragraphs number 2 and 3 of the request letter are enclosed for your convenience.

Your advice and counsel are respectfully requested concerning the enclosed request for information under the provisions of Article 6252-17a, VTCS.

Sincerely,



W. Kent Johnson
Director, Legal Services

enclosures

cc: Dennis R. Jones
William H. Reid, M.D.
Jaylon Fincannon
Rick Campbell
Toni Hunter
Dona Hamilton

163/k10