



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

January 12, 1989

Vernon Arrell  
Commissioner  
Texas Rehabilitation Commission  
118 E. Riverside Drive  
Austin, Texas 78704-9982

Dear Mr. Arrell:

This will acknowledge receipt of your letter of December 12, 1988, regarding whether the Texas Rehabilitation Commission has the authority to destroy information in one of its files. Your letter has been designated ID# 5176. This decision is OR89-015.

You do not ask whether the information at issue must be released to the public; you ask whether the information may be destroyed. You note:

The commission was recently asked by a client's representative/guardian to obtain records from another organization from which the Commission had purchased a service. The service was to aid the Commission in its evaluation of the client. The organization provided the service and sent to the Commission a summary (as was the customary request of the Commission) and not the raw data for the service. The client's guardian subsequently asked the commission to obtain the raw data. The commission obtained the raw data, placed a copy in the client's file and sent a copy to the client's guardian (as was requested).

The client's guardian then notified the Commission that part of the information on the raw data documents was false or was inappropriately obtained (see attached letter dated October 26, 1988). The guardian then requested that the data be removed from the

commission's file and "all files wherever they are."

The Commission's response to the guardian's request was to inform the organization that provided the raw data, and the TRC counselor (see attached document dated November 1, 1988), to only release the document with a copy of the October 25, 1988 "correction notice" letter or only with the Commission's permission. The client's guardian wants the documents removed from the client file and destroyed.

Section 12 of the Open Records Act makes it a criminal offense to wilfully destroy, alter, or remove public records:

Any person who wilfully destroys, mutilates, removes without permission as provided herein, or alters public records shall be guilty of a misdemeanor and upon conviction shall be fined not less than \$25 nor more than \$4,000, or confined in the county jail not less than three days nor more than three months, or both such fine and confinement.

See also art. 6252-17a, § 5(a) (custodian of records shall preserve public records).

Records may, however, in some instances, be amended without constituting a prohibited "alteration." For example, Attorney General Opinion MW-327 (1981) indicated that a state agency cannot expunge references to an employee's termination from its employment records or alter those records to indicate that the employee in question separated from the agency in some manner, such as voluntary resignation. Similarly, in Attorney General Opinion JM-830 (1987), the attorney general held that the Texas Commission on Human Rights lacks authority to require state agencies to seal documents. Nor can agencies voluntarily agree to seal documents subject to the Open Records Act. The opinion indicated, however, that the Open Records Act does not prohibit the Commission from requiring the addition of information to the employee's records to explain or refute inaccurate evaluations or reasons for termination. See also MW-327.

For similar reasons, the Texas Rehabilitation Commission cannot destroy data in its files simply because one of its clients or their representatives requests the destruction of the data. Of course, the commission may release disclaimers about clients' files if the commission, in its discretion, finds it advisable to do so.

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 OR89-015.

Yours very truly,

*Open Government Section  
of the Opinion Committee* 

Open Government Section  
of the Opinion Committee  
Prepared by Jennifer S. Riggs  
Chief, Open Government Section

JSR/bc

Ref.: ID# 5176  
ID# 5010

Copy to: Betty Jo Gruehl  
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Enclosure: JM-830