



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

April 3, 1989

Mr. Bob Dickson
Executive Director
Texas Commission on Alcohol
and Drug Abuse
1705 Guadalupe
Austin, Texas 78701-1214

Dear Mr. Dickson:

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# 5899; this decision is OR89-99.

Under the Open Records Act, all information held by governmental bodies is open unless the information falls within one of the act's specific exceptions to disclosure. The act places on the custodian of records the burden of proving that records are excepted from public disclosure. If a governmental body fails to claim an exception, the exception is ordinarily waived unless the information is deemed confidential under the act. See Attorney General Opinion JM-672 (1987). The act does not require this office to raise and consider exceptions that you have not raised.

As Executive Director of the Texas Commission on Alcohol and Drug Abuse (TCADA), you inquire whether patient-identifying information contained in an appeal of a decision before the TCADA may be withheld from the public. You contend that this information is protected from public disclosure by subsections 3(a)(1) and (7) of the Open Records Act and 42 U.S.C. §§ 290dd-3 and 290ee-3. You have also submitted an unsigned court order that requires that this information be withheld from the public. We assume that a signed order has been filed by the court. If not, please advise us of that fact.

Section 3(a)(1) of the Open Records Act protects "information deemed confidential by law, either Constitutional, statutory, or by judicial decision."

Mr. Bob Dickson
April 3, 1989
Page 2

Sections 290dd-3 and 290ee-3 of Title 42 of the United States Code require that the identities of alcohol and drug abuse patients be withheld from the public when this information is held by alcohol or drug abuse rehabilitation agencies "regulated, or directly or indirectly assisted by any department or agency of the United States." Further, the identities of drug or alcohol abuse patients are protected by the common-law privacy aspect of section 3(a)(1). See Open Records Decision No. 370 (1983). Section 3(a)(1) therefore, authorizes withholding this information.

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 OR89-99.

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/RWP/bc

Ref.: ID# 5899