



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

June 13, 1989

Mr. Larry W. Schenk
City Attorney
City of Longview
P. O. Box 1952
Longview, Texas 75606-1952

Dear Mr. Schenk:

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# 6410; this decision is OR89-178.

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.

The City of Longview received a request for copies of tape recordings of Emergency Medical Service (EMS) calls received between 7 p.m. and 9 p.m. on April 23, 1989. You have provided us with a copy of the tape recordings which contain patient information, including name, address, gender and age; incident information, such as date, pick up location, person requesting an ambulance; and a description of the injury and part of the body affected. You suggest that this information may be protected under section 3(a)(1) of the Open Records Act.

Section 3(a)(1) protects "information deemed confidential by law," including constitutional and common-law privacy. A constitutional right of privacy will exist if the information at issue relates to marriage, procreation, contraception, family relationships, and child rearing and education. Paul v. Davis, 424 U.S. 693, 713 (1976). The

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common-law privacy right protects highly intimate or embarrassing facts about a person such that its disclosure would be highly objectionable to a reasonable person. Industrial Found. of the South v. Texas Indus. Accident Bd., 540 S.W.2d 668, 683 (Tex. 1976), cert. denied, 430 U.S. 930 (1977).

The fact that a person received emergency medical care or the type of illness he suffered, however, may not necessarily be protected by constitutional or common-law privacy. In Open records Decision No. 237 (1980), the attorney general determined that detailed EMS reports relating to persons who had given birth under the care of lay midwives were excepted from disclosure under a common-law or constitutional right of privacy. By contrast, EMS reports that contain relatively little patient or incident information will not be protected by either constitutional or common-law privacy. Open Records Decision No. 258 (1980).

Information about a person's injury or illness will raise a privacy claim if it relates, for example, to a "drug overdose, acute alcohol intoxication, obstetrical/gynecological illness, convulsions/seizures, or emotional/mental distress." Open Records Decision No. 262 (1980). The information at issue, relating to persons suffering from cardiac distress and an allergic reaction to foods ingested, does not fall within the protected constitutional "zones of privacy" or the common-law aspect of privacy. You must honor the request for the release of 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 OR89-178.

Yours very truly,

*Open Government Section
of the Opinion Committee*

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

JSR/FAF/bc

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cc: Michael Ramey
Longview Newspapers, Inc.
P. O. Box 1792
Longview, Texas 75606

Ref.: ID# 6410

Enclosures: ORD-237
ORD-258