



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

July 18, 1989

Mr. Charles E. Galey
Jones, Flygare, Galey,
Brown & Wharton
Attorneys for Lubbock County Hospital District
P. O. Box 2426
Lubbock, Texas 79408-2426

Dear Mr. Galey:

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# 6460; this decision is OR89-223.

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 Lubbock County Hospital District, d/b/a Lubbock General Hospital (the hospital) received a request for information concerning the hospital's emergency ambulance service. The requested information, relates to hospital receipts, invoices, and account statements regarding ambulance transport service, minutes of the hospital's board of directors' meetings, correspondence between hospital officers and/or employees and representatives of ambulance transport service providers, emergency medical service dispatch records, emergency service personnel assignments, and helicopter service cost information.

On behalf of the hospital, you advise that the hospital will release the minutes of the board of directors' meetings, but you claim that the remainder of the information is

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protected from required public disclosure under sections 3(a)(1), 3(a)(2), 3(a)(3), 3(a)(7), and 3(a)(11) of the Open Records Act.

Among the information at issue are emergency medical service (EMS) dispatch records. You have not provided copies of these reports. However, the availability of this information is governed by Informal Ruling OR89-178 (1989). See also Open Records Decision Nos. 262, 258 (1980) (copies enclosed). You must apply the guidance in informal ruling OR89-178 in determining whether information in the hospital dispatch records/EMS reports is protected.

You also ask about the hospital duty records of employees who rendered service on specific emergency service helicopter flights. The Open Records Act protects certain information in personnel files. However, information need not actually be in a "personnel" file to fall within one of the act's exception to required public disclosure. Any information that bears on the qualifications for employment, the terms of employment, the separation from employment, and anything else that bears on the employment relationship is part of an employee's personnel file. Open Records Decision No. 55 (1974). We conclude that the hospital duty assignments at issue are appropriately categorized as "personnel file" information.

Section 3(a)(2) protects personnel file information only if its release would cause an invasion of privacy under the test articulated for section 3(a)(1). Generally, the name, position, salary, and experience of public employees cannot be withheld under section 3(a)(2). Open Records Decision Nos. 342 (1982); 165 (1977). Any information that relates to hospital employees' job descriptions or duty assignments is public. Similarly, we have determined that information contained in an employee's appointment calendar that relates to public employment activities must be released. The Open Records Act reaches information concerning the internal operations of a governmental body and the performance of its employees. Unless the information in the appointment calendar relates to the personal activities of a public employee, it is public information and must be released.

Section 3(a)(3) of the act excepts from public disclosure information relating to pending or "reasonably anticipated" litigation involving a governmental body if the release of the information might adversely affect the litigation interests or strategy of the governmental body.

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Heard v. Houston Post Co., 684 S.W.2d 210 (Tex. App. - Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 474 (1987). This office will find that litigation is "reasonably anticipated" only if a governmental body furnishes concrete evidence establishing that litigation involving a specific matter is realistically contemplated.

In your letter, dated May 11, 1989, you refer to a letter from the requestor, dated April 20, 1989, concerning an investigation of the status of his contract with the hospital for emergency service air transportation. You argue that this letter "clearly indicates the probability of litigation." We are not persuaded by your argument. We do not believe that this letter necessarily indicates that litigation is being contemplated by the parties subject to the contract. You have not demonstrated how the documents you have relate to any litigation pending or contemplated such that it may be withheld under section 3(a)(3). Consequently, section 3(a)(3) does not apply to the information at issue.

You argue that documents and correspondence between hospital employees and/or officers and representatives of air transport providers are protected by sections 3(a)(11) and 3(a)(7) of the act, and you have provided representative samples of this information. Section 3(a)(11) protects inter-agency or intra-agency information that consists of advice, opinion, or recommendation that actually plays a role in the governmental body's decision-making process. Open Records Decision No. 464 (1987). None of the correspondence you submitted consists of advice, opinion, or recommendation that aided the hospital in its internal deliberative processes. It is not the type of information section 3(a)(11) was designed to protect, and it must therefore be released.

Section 3(a)(7) protects, among other things, information deemed confidential pursuant to the attorney-client privilege. The attorney client privilege protects an attorney's written advice, but only if the advice is predominately legal, as opposed to business, in nature. Open Records Decision No. 462 (1987). The advice need not be related to litigation to be excepted under section 3(a)(7). Open Records Decision No. 462. The samples of correspondence you provided include a letter from you to a hospital officer concerning a hospital transportation tax matter; as such this correspondence is confidential pursuant to the attorney-client privilege and is protected from

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public disclosure by section 3(a)(7). Similarly, any correspondence between your office and the hospital that consists of legal advice relating to hospital matters may be withheld.

Concerning the information about the hospital's expenditure of funds for air transportation service, please note that section 6(3) of the act specifically makes public:

information in any account, voucher, or contract dealing with the receipt or expenditure of public or other funds by governmental bodies, not otherwise made confidential by law.

The list of information expressly deemed public in section 6 does not override the act's exceptions to disclosure. Houston Chronicle Publishing Co. v. City of Houston, 531 S.W.2d 177, 185 (Tex. Civ. App. - Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 233 (1980). The section 6 enumeration demonstrates the legislature's intent that information concerning the expenditure of public funds be available for public inspection. See Open Records Decision No. 233. The attorney general has determined that information similar to the information requested is public. See Open Records Decision Nos. 385 (1983) (information concerning hospital's accounts receivable is public); 171 (1977) (information regarding the costs of hospital furniture and equipment is public). Copies of these rulings are enclosed. Consequently, all information held by the hospital concerning the expenditure and receipt of funds for air transport service is public and must be released.

You argue that compiling the requested information would require the use of considerable time and expense. The Texas Supreme Court has held that the Open Records Act "does not allow either the custodian of records or a court to consider the cost or method of supplying requested information in determining whether such information should be disclosed." The court pointed out that all costs incurred in providing access must be borne by the requestor. Industrial Foundation of the South v. Texas Industrial Accident Board, 540 S.W.2d 668, 687 (Tex. 1976), cert. denied 430 U.S. 931 (1977). see also V.T.C.S. art. 6252-17a, § 9(a) (costs for copies of public records reflect the actual cost of producing those records). While the act prohibits delay in producing public records, you may require the requestor to clarify or narrow his request for

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information. See Open Records Decision No. 87 (1975). You must release all information deemed public by this ruling.

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 OR89-223.

Yours very truly,

*Open Government Section
of the Opinion Committee*

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of the Opinion Committee
Approved by David A. Newton
Assistant Attorney General

DAN/FAF/bc

Ref.: ID# 6460
6766

cc: Warren R. Westberg
McWhorter, Cobb and Johnson
Attorneys for Wallace Thrash
P. O. Box 2547
Lubbock, Texas 79408

Enclosures: OR89-178
ORD 262
ORD 258
ORD 385
ORD 171