



**THE ATTORNEY GENERAL
OF TEXAS**

September 25, 1989

**JIM MATTOX
ATTORNEY GENERAL**

Mr. Dennis C. Gardner
Staff Counsel
Metropolitan Transit Authority
P. O. Box 61429
Houston, Texas 77208

Dear Mr. Gardner:

A reporter has asked the Metropolitan Transit Authority of Harris County to disclose the results of drug tests administered to authority employees. You have asked if sections 3(a)(1), 3(a)(2), or 3(a)(3) of the Open Records Act, article 6252-17a, V.T.C.S., permit the authority to deny this request.

You contend that Open Records Decision No. 324 (1982) establishes that drug test results are "confidential" within the meaning of section 3(a)(1) of the act, which prohibits the disclosure of information so characterized by constitutional or statutory law or by judicial decision. That decision held that the names and addresses of participants in a lead-content blood screening study were within section 5.08 of article 4495b, V.T.C.S., the Medical Practice Act, and were therefore protected by section 3(a)(1). Section 5.08(b) of article 4495b provides:

Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

In view of your assertion that transit authority drug tests "are administered under the supervision of a physician," we infer that test results are prepared, and records reflecting these results are created, under the same supervision. If this is so, these records are within section 5.08. See Open Records Decision No. 487 (1988).

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Because section 3(a)(1) governs your request, we do not address your claims regarding sections 3(a)(2) and 3(a)(3). 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 OR89-307.

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

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