



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 13, 1992

Ms. Beth Taylor
Assistant Attorney General
Medicaid Fraud Control Unit
Office of the Attorney General
P. O. Box 12548
Austin, Texas 78711-2548

OR92-479

Dear Ms. Taylor:

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# 11910.

You have received a request for information relating to a criminal investigation of an allegation of physical abuse in the death of a certain nursing home resident. Specifically, the requestor seeks:

1. Your complete investigative file pertaining to the above referenced matter, including, but not limited to the following:
2. Any and all witness statements and notes pertaining to conversations with witnesses or personnel involved in this matter and interviewed by your office;
3. Letters to the Dallas County Medical Examiner;
4. Last known addresses of any and all witnesses and personnel involved in this matter and interviewed by your office; and
5. All non-exempt documents pertaining to your investigation of the incident.

You have submitted to us for review records of the MFCU's criminal investigation and records of a Department of Health investigation. You claim that the requested

information is excepted from required public disclosure by sections 3(a)(1) and 3(a)(8) of the Open Records Act.

Section 3(a)(1) excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." Section 242.127 of the Health and Safety Code provides:

A report, record, or working paper used or developed in an investigation made under this subchapter [Subchapter E: Reports of Abuse and Neglect] is confidential and may be disclosed only for purposes consistent with the rules adopted by the board or the designated agency.

Health and Safety Code § 242.127; *see also* 25 T.A.C. § 145.88(i). You advise us that the requested information was developed as part of an investigation into the alleged abuse of a patient conducted pursuant to subchapter E of chapter 242. Pursuant to several written agreements, the Office of the Attorney General and the Department of Health exchange information and coordinate their investigations relating to allegations of abuse and neglect in nursing homes. Because of the close coordination between the Office of the Attorney General and the Department of Health and the constant exchange of information between the two agencies, we conclude that information developed by the Office of the Attorney General in an investigation of allegations of abuse and neglect in nursing homes is afforded the protection granted in section 242.127 of the Health and Safety Code. Therefore, we conclude that section 3(a)(1) excepts the requested information from required public disclosure. As we resolve this matter under section 3(a)(1), we need not address the applicability of section 3(a)(8) at this time.

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 OR92-479.

Yours very truly,



Rick Gilpin
Assistant Attorney General
Opinion Committee

RG/GCK/lmm

Ref.: ID# 11910

cc: Mr. C. Hamilton Huckleberry
1121 West Jefferson Boulevard
Dallas, Texas 75208