



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 31, 1994

David R. Smith, M.D.
Commissioner of Health
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756

OR94-034

Dear Dr. Smith:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), Government Code chapter 552.¹ Your request was assigned ID# 18966.

The Texas Department of Health (the "department") has received two requests for information relating to complaints against a certain lay midwife. One of the requestors seeks "any record being held by the Texas Department of Health concerning . . . Julia Pirie." The other requestor seeks "the entire contents of every file or record regarding [Julia Pirie's] practice of midwifery," and "every item of information . . . regarding Mrs. Pirie." The information submitted to us for review includes birth certificates, correspondence to and from complainants, numerous medical records, and other documents relating to complaints against a certain lay midwife. You have submitted the requested information to us for review and claim that sections 552.101, 552.103, and 552.108 of the Government Code except it from required public disclosure.

Section 552.108 of the act excepts:

- (a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . .
[and]

¹We note that the Seventy-third Legislature repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution

If an incident involving allegedly criminal activity is still under active investigation or prosecution, any proper custodian of information that relates to the incident may invoke section 552.108. Open Records Decision No. 474 (1987) at 4-5.

We understand that the requested information relates to prosecution pending in McLennan County. The Office of the McLennan County Criminal District Attorney claims that release of the requested information will undermine its prosecution of Ms. Pirie. We conclude, therefore, that the department may withhold the requested information under section 552.108 of the act. As we resolve this matter under section 552.108, we need not address the applicability of the other claimed exceptions 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 contact this office.

Yours very truly,



Toya C. Cook
Assistant Attorney General
Open Government Section

TCC/GCK/rho

Ref.: ID# 18966
ID# 20471

Enclosures: Submitted documents

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