

January 28, 1999



OFFICE OF THE
ATTORNEY GENERAL
STATE OF TEXAS

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JOHN CORNYN
Attorney General

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Mr. William S. Nail
Deputy Executive Director
and General Counsel
Employees Retirement System
of Texas
P.O. Box 13207
Austin, Texas 78711-3207

OR99-0274

Dear Mr. Nail:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 121647.

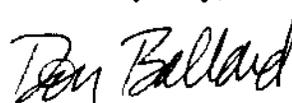
The Employees Retirement System of Texas (the "system") received an open records request for sixteen categories of information pertaining to the system's legal basis and policy supporting a limitation on payment for the prescription drug Viagra. You state that to the extent that the system possesses responsive information, that information will be released to the requestor. You state, however, that some of the requested information is in neither the actual or constructive possession of the system, that some of the requests would require legal research, and that some of the requests are in the form of interrogatories to which the system is not required to respond under the Open Records Act.

Section 552.002 of the Government Code defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." The Open Records Act does not require a governmental body to obtain information not in its possession or to prepare new information in response to a requestor. Open Records Decision No. 445 (1986). Nor does the Open Records Act require a governmental body to answer factual questions or to, in effect, respond to legal interrogatories. Open Records Decision No. 347 (1982). The Open Records Act applies only to information already transcribed into tangible form.

After reviewing the request received by the system, we agree that request numbers 1, 2, 3, 5, 10, 11, 12, 13, and 14 constitute questions that the system is not required to answer under chapter 552 of the Government Code. Furthermore, based on your representation that the system does not possess any records that are responsive to the remaining requests, other than those documents already provided to the requestor, the system need not provide any further information regarding those requests.¹

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/RWP/nc

Ref.: ID# 121647

¹You inform us that although Blue Cross and Blue Shield of Texas, Inc., which administers HealthSelect of Texas, possesses information that is responsive to request number eight, the system has neither actual or constructive possession of this information. Further, you inform us that the HealthSelect administrator has refused to release this information to the system and that the system does not have a legal right to compel the disclosure of this information.

bcc: Mr. Munson "Chip" Compton
1013 Hidden Meadow Drive
Austin, Texas 78750-1809
(w\o enclosures)