



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

April 10, 1990

Honorable H. Tati Santiesteban
Chairman
Senate Natural Resources
2616 Montana Avenue
El Paso, Texas 79903

LO-90-15

Dear Senator Santiesteban:

You advise that the Austin State Hospital has "endeavored to engage" the services of a record services company that is "in the business of release of medical records for transfers." You ask whether the records services company is a "governmental body" within the meaning of the Open Records Act (V.T.C.S., art. 6252-17a). You also ask whether medical or mental health records maintained by eleemosynary institutions enumerated in V.T.C.S., arts. 3174a and 3174b are subject to the Open Records Act.

Section 2 of the Open Records Act provides, in part, as follows:

In this Act:

- (1) "Governmental body" means:
- (F) the part, section, or portion of every organization, corporation, commission, committee, institution, or agency which is supported in whole or in part by public funds, or which expends public funds. Public funds as used herein shall mean funds of the State of Texas or any governmental subdivision thereof.

We are advised that the Austin State Hospital has not contracted with a company to provide services with respect to the release or management of records. Therefore, the question posed in your letter is hypothetical. In general, where a private enterprise receives public funds in exchange for specific, measurable goods or services, such receipt of public funds does not bring the enterprise within the definition of governmental body. See, Kneeland v. National

Collegiate Athletic Assn., 850 F.2d 224 (5th Cir. 1988). However, where a private enterprise is in possession of information as the agent of a governmental body, it is as if the governmental body itself has possession of the information. Open Records Decision Nos. 462 (1987), 437 (1986). As the Austin State Hospital is clearly a governmental body, records maintained on its behalf by a records services firm would be subject to the Open Records Act.

Virtually all information in the physical possession of a governmental body is "public information" subject to the Open Records Act. V.T.C.S., art. 6252-17a, § 3(a). Whether such "public information" is excepted from public disclosure depends on whether it comes within one of the exceptions provided by the legislature in § 3(a) of the Open Records Act.

You have noted that information held by an eleemosynary institution may be excepted from public disclosure as "information deemed confidential by law" within the meaning of § 3(a)(1) of the Open Records Act. In this respect you cite common-law and constitutional privacy, the doctor-patient privilege, and statutory provisions such as V.T.C.S., 4495b, § 5.08 (b). See also, Open Records Decision No. 546 (1990). While such provisions of law may often except medical or mental health records held by an eleemosynary institution from public disclosure, such determinations must be made on a case by case basis, after an examination of the specific records sought to be withheld. Section 7 of the Open Records Act provides a procedure for obtaining an attorney general opinion as to whether information held by a governmental body is excepted from public disclosure.

Very truly yours,


John Steiner
Assistant Attorney General

APPROVED: Sarah Woelk, Chief
Letter Opinion Section

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Ref: ID# 8316