



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

July 14, 1989

Ms. Margaret Ray
County Clerk
The County of Howard
P. O. Box 1468
Big Spring, Texas 79721-1468

Dear Ms. Ray:

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# 6663; this decision is OR89-207.

Under the Open Records Act, all information held by governmental bodies is open unless the information falls within one of the act's specific exceptions to disclosure. The act places on the custodian of records the burden of proving that records are excepted from public disclosure. If a governmental body fails to claim an exception, the exception is ordinarily waived unless the information is deemed confidential under the act. See Attorney General Opinion JM-672 (1987). The act does not require this office to raise and consider exceptions that you have not raised.

You ask whether the general index to birth and death records you maintain as Howard County Clerk is a public record. You cite the section 3(a)(15) exception to disclosure. You also express concern about the release of notations that could imply that an individual's birth was "illegitimate." This office will raise section 3(a)(1) on behalf of governmental bodies that fail to claim the exception.

Section 3(a)(1) protects

information deemed confidential by law,
either Constitutional, statutory, or by
judicial decision.

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Information may be withheld under section 3(a)(1) only if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. Industrial Foundation of the South v. Texas Industrial Accident Board, 540 S.W.2d 668 (Tex. 1976) cert. denied, 430 U.S. 930 (1977). The Industrial Foundation court also indicated that constitutional privacy protects information within the "zones of privacy" described by the United States Supreme Court in Roe v. Wade, 410 U.S. 113, 152-153 (1973) and Paul v. Davis, 424 U.S. 693, 712-713 (1976). These "zones" include matters related to marriage, procreation, contraception, family relationships, and child rearing and education.

In Open Records Decision No. 486 (1987), this office held that section 3(a)(15) does not protect summary lists but indicated that a birth record may contain a notation that is protected by privacy; if, for example, the record shows that a birth was "illegitimate." The indices you submit for review do not, on their face, trigger privacy interests. You note that the records may list the mother's name under the column in the record for "Given Name of Father." The fact that a parent wishes a child to have the mother's given name is not the equivalent of labeling the child "illegitimate." Many women who are married wish their child to have their name. Moreover, the fact that a child is born out of wedlock is not necessarily or automatically protected by privacy. As times change, the things that were once stigmatizing may no longer be so. Absent a showing of special circumstances in a specific case, you must release the general index to birth records.

With regard to "cancelled" birth records, you do not indicate why you delete these entries. If a specific statute other than the Open Records Act, such as the Family Code, requires deletion, these references should be deleted in their entirety, not simply by having a line drawn through them. These deletions do not, however, warrant withholding the entire index. Please explain more fully your concern about "cancelled" birth records and we will research the issue.

Because case law and prior published open records decisions resolve your request, we are resolving this matter

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with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR89-207.

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

Enclosure: ORD-486

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