



Office of the Attorney General
State of Texas

October 22, 1991

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ATTORNEY GENERAL

Robert A. MacLean, M.D.
Acting Commissioner
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

Open Records Decision No. 596

Re: Whether section 3(a)(15)(A) of the
Open Records Act or section 192.008 of
the Health and Safety Code controls the
release of an official birth record of an
adoptee (RQ-94)

Dear Dr. MacLean:

You ask whether a 1989 amendment to the Open Records Act, article 6252-17a, V.T.C.S., makes the original birth certificate of an adopted person in the records of the Bureau of Vital Statistics available to the public in a case in which a supplementary birth certificate has been filed for the adopted person, and 50 years have passed since the filing of the original birth certificate with the Bureau of Vital Statistics. Your question arises out of a request for a particular birth certificate. In order to place your question in the proper context, it is necessary to review statutory provisions regarding birth certificates generally, statutory provisions regarding birth certificates of adopted persons, and the Open Records Act provision regarding birth certificates.

The administration of birth records by the Bureau of Vital Statistics¹ is governed by chapters 191 and 192 of the Health and Safety Code. The birth of every child born in the state must be registered. Health & Safety Code § 192.001. Birth certificates are initially filed with a local registrar. *Id.* § 192.003. The local registrar copies birth certificates for his or her own records and sends the originals to the state registrar.² *Id.* §§ 191.026, 191.029. Section 191.051 provides that

¹The Bureau of Vital Statistics is within the Department of Health. Health & Safety Code § 191.002.

²The director of the Bureau of Vital Statistics is the state registrar. Health & Safety Code § 191.004.

"[s]ubject to [Board of Health] rules controlling the accessibility of vital records," the state registrar must supply a certified copy of a birth record to a "properly qualified applicant." See Tex. Dep't Health, 15 Tex. Reg. 5603 (1990) (codified at title 25, section 181.1, of the Texas Administrative Code) (defining "properly qualified applicant"); see also Health & Safety Code § 191.054 (requiring certified copies of birth records to be provided without fee in certain instances). For our purposes, section 191.051 is significant because it provides that access to birth records is subject to the control of the Texas Board of Health.

A supplementary birth certificate may be filed with the Bureau of Vital Statistics if the person who is the subject of the birth certificate is adopted. Health & Safety Code § 192.006(a)(3). The supplementary birth certificate is in the name of the adoptive parents and does not disclose that the child is adopted. *Id.* § 192.008(a). "After a supplementary birth certificate of an adopted child is filed, information disclosed from the record must be from the supplementary certificate." *Id.* § 192.008(b). Generally, only the court that granted an adoption may order access to the original birth certificate. *Id.* § 192.008(d), (e); see also Fam. Code § 11.17(d) (adoption records in possession of Department of Human Services are confidential).

The substance of the provisions discussed above was in place when the Open Records Act, article 6252-17a, V.T.C.S., was enacted. See former V.T.C.S. art. 4477, rules 46a, 47a, 54a (sources for Health and Safety Code provisions discussed above); Acts 1973, 63d Leg., ch. 424, at 1112 (enacting Open Records Act). The Open Records Act declared that information maintained by governmental bodies was open to the public unless the information came within one of the act's exceptions to required public disclosure. One of the exceptions, set out in section 3(a)(15) of the act, was for "birth and death records maintained by the Bureau of Vital Statistics in the State of Texas." Thus, the Open Records Act did not change the status quo in regard to birth records.³ As before, it was left to the Board of Health to regulate access to birth records in accordance with the provisions of then article 4477.

³The Open Records Act did not prohibit release of birth records as implied by Attorney General Opinion H-115 (1973) (overruled by Open Records Decision Nos. 338, 307 (1982)). Rather, section 3(a)(15) merely established that the Open Records Act did not require release of birth records. The continuing validity of the provisions making certain adoption records confidential was recognized by section 3(a)(1) of the Open Records Act, which provides that records made confidential by statute are to be withheld from public disclosure.

Original birth certificates of adopted persons for whom supplementary birth certificates had been filed remained confidential.⁴

In 1989 the legislature amended section 3(a)(15)(A) of the Open Records Act to place the following limitation on the exception for birth records:

[A] birth record is public information and available to the public on and after the 50th anniversary of the date on which the record is filed with the Bureau of Vital Statistics or local registration official.

Acts 1989, 71st Leg., ch. 920, at 3951 (hereinafter Senate Bill 973). Section 3(a)(15)(A) places a 50-year time limit on the authority of the Bureau of Vital Statistics to limit access to birth records. Your specific question is whether section 3(a)(15)(A) requires disclosure of the original birth certificate of an adopted person whose original birth certificate was filed in Texas in 1938 and for whom a supplementary birth certificate was filed, or whether the original birth certificate continues to be available only pursuant to court order as provided by section 192.008(d) and (e) of the Health and Safety Code.

The enactment of a general law does not ordinarily repeal a special law on the same subject matter. *Flowers v. Pecos River R. R.*, 156 S.W.2d 260 (Tex. 1941). Under that rule of statutory construction, the specific statute prohibiting access to the original birth certificate of a person who is the subject of a supplementary birth certificate would be an exception to the general provision making birth certificates available to the public 50 years after filing. It has been suggested, however, that the legislative history of section 3(a)(15) indicates that the legislature specifically intended to make adoption records available and therefore that the rule of construction applied in *Flowers* does not apply here. See Gov't Code § 311.026. We conclude, however, that the legislative history does not support that suggestion.

The sponsor of Senate Bill 973 testified about the bill on three different occasions. Hearings on S.B. 973 Before the Senate Comm. on State Affairs, 71st Leg. (April 24, 1989); Debate on S.B. 973 on the Floor of the Senate, 71st Leg. (April 27 and May 27, 1989) (tapes available through Senate Staff Services). He

⁴Pursuant to section 3(a)(1) of the Open Records Act, specific statutory confidentiality provisions remained in effect after the adoption of the Open Records Act.

stated that the purpose of the bill was to respond to complaints by genealogists about 1987 legislation that had limited their access to birth and death records. The 1987 legislation Senator Glasgow apparently had in mind was legislation that amended section 3(a)(15) of the Open Records Act to provide that birth and death records maintained by local registrars could be withheld from public disclosure. Acts 1987, 70th Leg., ch. 349, at 1770. That change overrode several attorney general opinions that had held that birth and death records maintained by local registrars, in contrast to records maintained by the Bureau of Vital Statistics, could not be withheld under section 3(a)(15). The 1987 legislation did not change the status quo in regard to adoption records. Although the sponsor did state that he thought a 50-year period was adequate to protect adoption records, his testimony makes clear that he understood Senate Bill 973 to relieve the effects of 1987 legislation, not to overturn the detailed and long-standing statutory scheme governing birth certificates of adopted persons. Because original birth certificates of adopted persons who were the subject of supplementary birth certificates were not available to the public either before or after 1987,⁵ the sponsor of Senate Bill 973 was presumably not responding to complaints about the availability of that information. We conclude, therefore, that it was not the intent of the legislature to repeal the confidentiality provisions relating to adoption records (now set out in section 192.008 of the Health and Safety Code) when it amended section

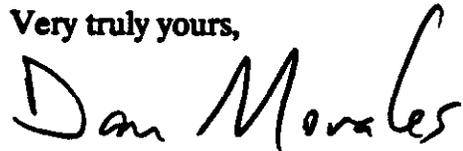
⁵A 1976 Health Department rule made such records confidential in the hands of local registrars. 25 T.A.C. § 181.8. Generally, an agency cannot make information confidential by rule. See Open Records Decision No. 479 (1987). The rule in question, however, had a clear statutory basis in legislative instructions to the Bureau of Vital Statistics to issue detailed instructions to local registrars "as may be required to procure the uniform observance of its provisions and the maintenance of a perfect system of registration." Former V.T.C.S. art. 4477, rule 51a (now codified in section 191.004(b) of the Health and Safety Code); see also *id.* rule 55a (providing that local registrars are under the supervision of the state registrar and that all of its requirements are to be uniformly complied with) (now codified in section 195.001(a) of the Health and Safety Code). In 1987 the legislature amended rule 51a of article 4477 to specifically instruct the Department of Health to adopt rules to ensure that local registrars do not reveal confidential adoption information. Acts 1987, 70th Leg., ch. 815, at 2824. See now Health & Safety Code § 192.008(c).

3(a)(15)(A) of the Open Records Act in 1989.⁶ Thus, absent a court order, the Bureau of Vital Statistics may not release an original birth certificate of a person for whom a supplementary birth certificate has been filed.

SUMMARY

In the absence of a court order, the Bureau of Vital Statistics may not disclose information in the original birth certificate of an adopted person for whom a supplementary birth certificate has been filed.

Very truly yours,



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⁶The bill Senator Glasgow sponsored was not the only legislation enacted in 1989 to respond to the 1987 change in section 3(a)(15) of the Open Records Act. Another bill, House Bill 1285, returned section 3(a)(15) to its pre-1987 status by eliminating the words "or by a local registration official." Acts 1989, 71st Leg., ch. 1248, § 9, at 4996. The publisher of Vernon's annotated statutes printed a version of section 3(a)(15) that combines the two bills. Thus, it contains no reference to local registration officials but retains the time limitations of Senator Glasgow's bill. You do not ask and we do not consider whether that version is a correct statement of the law.

MADELEINE B. JOHNSON
Chair, Opinion Committee

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