



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 22, 1996

Mr. James M. Churchill
Attorney
Office of General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR96-0772

Dear Mr. Churchill:

You ask this office to reconsider its ruling in Open Records Letter No. 96-0330 (1996) ("OR96-330"). Your request for reconsideration was assigned ID# 39566.

In OR96-330, this office held that the Texas Department of Health (the "department") must release a copy of a birth certificate of an individual in response to a request for information. The department asserted that the information was excepted from disclosure under section 552.115, and also argued that the information was protected under section 191.051 of the Health and Safety Code. The department failed, however, to timely request an attorney general opinion under section 552.301 of the Government Code. This office concluded that the department failed to show a compelling reason that the information should not be disclosed and that the department must therefore release the requested information.¹ In your request for reconsideration, you once again assert that the information is made confidential pursuant to section 191.051 of the Health and Safety Code, as well as administrative rules adopted the department.

We do not believe that section 191.051 of the Health and Safety Code makes the requested information confidential. Section 191.051 provides "[s]ubject to board rules controlling the accessibility of vital records, the state registrar shall supply to a properly qualified applicant, on request, a *certified copy* of a record, or part of a record, of a birth, death, or fetal death registered under this title." (Emphasis added.) On its face,

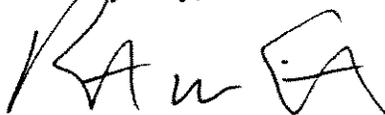
¹ The fact that information is confidential by law constitutes a compelling reason that overcomes the presumption of openness. Open Records Decision No. 150 (1977).

this statute only applies to certified copies of birth or death records. The provision guarantees that a qualified applicant shall be entitled to a certified copy of a birth or death record. Although the provision includes the qualifying phrase “[s]ubject to board rules controlling the accessibility of vital records,” we believe this qualification only applies to the provision of certified copies. For example, under this provision the Texas Board of Health (the “board”) has adopted rules setting the fees for certified copies. 25 T.A.C. 181.22. This qualification does not specifically give the department or the board the authority to make information confidential.

Generally, administrative rules cannot amend the Open Records Act by creating new exceptions to required public disclosure. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976), *cert. denied* 430 U.S. 930 (1977). An administrative agency must have clear statutory authority to designate information confidential under the Open Records Act. Open Records Decision No. 527 (1989) at 6. Section 191.051 does not give the department or the board authority to designate information confidential.

Because you have not shown compelling reasons why the requested records should not be released, the information is presumed to be public and must be released. 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,



Robert W. Schmidt
Assistant Attorney General
Open Records Division

RWS/rho

Ref: ID# 39566

cc: Ms. Elizabeth A. Allen
Reporter
The Brownsville Herald
1135 East Van Buren
Brownsville, Texas 78520