



August 24, 2000

Ms. Karmen Binka
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2000-3237

Dear Ms. Binka:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 138144.

The City of San Antonio (the "city") received a request for information, which states in pertinent part:

I would like to begin receiving "the daily list of births" showing the parents [sic] name and address and the sex of the child.

Among other questions, you ask whether the requested information is excepted from disclosure under section 552.115 of the Government Code. The requestor has also submitted comments to this office. *See* Gov't Code § 552.304. We have considered the exception you claim and your questions, and we have reviewed the submitted information.

You explain that:

the City has attached an example of a summary birth index and an example of a general birth index. . . . Please note that the summary index does not include the parents' names, addresses, or the sex of the child. [The requestor] is specifically interested in acquiring this information. This information is only contained in the general index. At this time, the City requests an

opinion from the Attorney General regarding exactly which information may be included in a birth index list, and which information must be excluded. In addition, clarification is specifically needed regarding whether the parents' names, addresses and the sex of the child should be included in a list that is released.

Thus, we first address your request for clarification of what categories of information now comprise a summary birth index, and what categories of information now comprise a general birth index. We find that this question is answered by the current language of section 552.115 and related administrative rules.

The 76th legislature substantially amended section 552.115, and the provision now states:

(a) A birth or death record maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official is excepted from the requirements of Section 552.021, except that:

(1) a birth record is public information and available to the public on and after the 50th anniversary of the date of birth as shown on the record filed with the bureau of vital statistics or local registration official;

(2) a death record is public information and available to the public on and after the 25th anniversary of the date of death as shown on the record filed with the bureau of vital statistics or local registration official;

(3) a general birth index or a general death index established or maintained by the bureau of vital statistics or a local registration official is public information and available to the public to the extent the index relates to a birth record or death record that is public information and available to the public under Subdivision (1) or (2); and

(4) a summary birth index or a summary death index prepared or maintained by the bureau of vital statistics or a local registration official is public information and available to the public.

(b) Notwithstanding Subsection (a), a general birth index or a summary birth index is not public information and is not available to the public if:

- (1) the fact of an adoption or paternity determination can be revealed by the index; or
- (2) the index contains specific identifying information relating to the parents of a child who is the subject of an adoption placement.

The above-quoted section 552.115(a)(4) refers to a "summary birth index" and the above-quoted section 552.115(a)(3) refers to a "general birth index." We understand your request for clarification to be an inquiry of what specific categories of information comprise each type of index. Although the Act itself contains no language that defines the categories of information that comprise each type of index, we find that the Texas Department of Health has promulgated administrative rules that answer your inquiry in this regard.¹ In pertinent part, the current rule, which took effect March 16, 2000, provides:

(3) A summary birth index shall be in alphabetical order by surname of the registrant. The index shall consist of the last, first, and middle name, if any, of the registrant, the date of the event, the county in which the event occurred, and the sex of the registrant.

(4) If the records falls into the open record category, a general index may be made available for public use. This index shall include the last, first, and middle name, if any, of the registrant; date of birth; county of birth; the parents' names; and the sex of the registrant.

24 Tex. Reg. 10730 (1999) (Tex. Dep't. of Health). Thus, we believe the term "summary birth index" as used in section 552.115 refers to a list, in alphabetical order by surname of the child, and that its contents are limited to the child's name, the child's date of birth, the county of birth, and the child's sex. Additionally, we believe that the term "general birth index" refers to a list containing only those categories of information that comprise a "summary birth index," with the additional category of the parents' names.² Having

¹Absent specific authority, a governmental body may not generally promulgate a rule that makes information confidential so as to except the information from required public disclosure pursuant to section 552.101 of the Act. *See* Gov't Code § 552.101; *see also* Open Records Decision Nos. 484 (1987), 392 (1983), 216 (1978). In the instant case, however, this office has found that the Texas Department of Health has been granted specific authority by the legislature to promulgate administrative rules that dictate the public availability of information contained in and derived from vital records. *See* Open Records Decision No. 596 (1991).

²As to the file number which you have included in both samples, we note that a Texas Department of Health administrative rule provides in relevant part that "local registration officials shall expunge or delete any state or local file numbers included in any general birth index made available to the public because such file numbers may be used to discover information concerning specific adoptions, paternity determinations, or the identity of the parents of children who are the subjects of adoption placements." 24 Tex. Reg. 10731.

established the types of information that comprise a "summary birth index" and a "general birth index," we next address whether the specific information at issue in the present request is excepted from required public disclosure.

A "summary birth index" is declared in subsection (a) of section 552.115 to be "public information and available to the public." Thus, unless subsection (b) is applicable to specific entries contained in such an index, we believe the above-stated categories of information contained in a "summary birth index" are not excepted from required public disclosure by section 552.115. Thus, assuming subsection (b) is not applicable to the entries, the city may release to the requestor its "summary birth index," to the extent that the index contains information that is responsive to the request.³

Like the "summary birth index," the information contained in the city's "general birth index" is excepted from required public disclosure to the extent that subsection (b) of section 552.115 is applicable to specific entries in that index. However, unlike the "summary birth index," the information contained in the "general birth index" is also excepted from disclosure by section 552.115 to the extent that it contains information derived from or related to a birth record that itself would be excepted from disclosure. Thus, pursuant to section 552.115(a)(1), the entries contained in the "general birth index" must be withheld from the public until the 50th anniversary of the date of birth for each entry. Because we understand that the present requestor seeks the parents' names and the address of the parents only for recent births, we conclude that the city must withhold from the requestor pursuant to section 552.115 the responsive information that would be contained in the city's "general birth index." In other words, the names of the parents are excepted from disclosure in this instance by section 552.115.

The requestor additionally seeks the addresses of the parents. As explained above, this is not a category of information included in either the summary index or the general index. We believe that the purpose behind section 552.115, that of preventing fraud, is one of the purposes behind the above-quoted administrative rules that dictate the categories of information that comprise each type of birth index. Thus, because the above-referenced administrative rules do not provide for the public release of the addresses of the parents derived from or related to the source birth records, we believe this information is made confidential under section 552.101 of the Government Code, in conjunction with the above-referenced administrative rules. The addresses of the parents therefore must not be publicly released.

10732 (Texas Dep't. of Health).

³However, it appears from the wording of the request that the only responsive information that would be contained in the summary birth index is the child's sex.

In summary, to the extent that subsection (b) of section 552.115 is not applicable to the information, the city must release to the requestor the responsive information contained in the city's "summary birth index," which we understand consists only of the child's sex. The "general birth index" of current births is excepted from disclosure in its entirety by section 552.115 of the Government Code and must not be released to the requestor. In addition, neither the file number nor the parents' addresses constitute categories of information that the city may include in either birth index. Further, this information, because it is derived from or related to a source birth record, is excepted from disclosure and must not be released pursuant to section 552.101 of the Government Code in conjunction with applicable administrative rules of the Texas Department of Health, as provided above.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

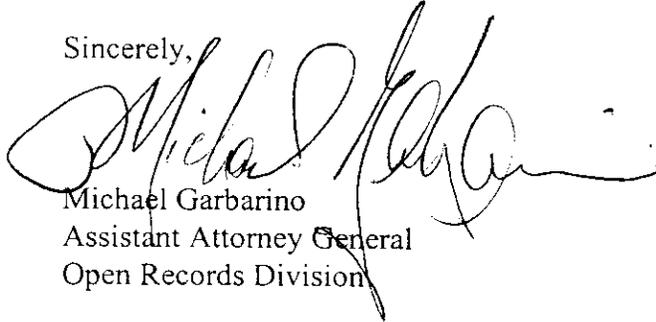
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Garbarino". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael Garbarino
Assistant Attorney General
Open Records Division

MG/pr

Ref: ID# 138144

Encl. Submitted documents

cc: Mr. John Coyne
P.O. Box 100898
San Antonio, Texas 78201
(w/o enclosures)