



November 22, 2000

Ms. Myrna Reingold
County of Galveston
4127 Shearn Moody Plaza
123 Rosenberg
Galveston, Texas 77550-1454

OR2000-4509

Dear Ms. Reingold:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 141550.

The Galveston County Health District (the "district") received a request for copies of the monthly abstract of death certificates for the years 1998, 1999 and 2000 (to date). You seek a decision from this office as to whether the social security numbers of the decedents listed in the monthly abstracts are excepted from disclosure under sections 552.101 and 552.115 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.115 excepts from disclosure birth and death records held by the bureau of vital statistics of the Texas Department of health, as well as local registration officials. The 76th legislature substantially amended section 552.115, and the provision now states in part:

(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.

You inform us that the district is required to file the requested abstracts with the local voter registrar pursuant to section 16.001(a) of the Texas Election Code. That provision states:

Each month the local registrar of deaths shall prepare an abstract of each death certificate issued in the month for a decedent 18 years of age or older who was a resident of the state at the time of death. The local registrar of deaths shall file each abstract with the voter registrar of the decedent's county of residence not later than the 10th day of the month following the month in which the abstract is prepared.

You further inform us that the district is required to record social security numbers on all records related to death under Chapter 193 of the Health and Safety Code. Section 193.001 is entitled "Form of Certificate" and provides in part:

(a) The department shall prescribe the form and contents of death certificates and fetal death certificates.

(b) The social security number shall be recorded on the death certificate and on *any other records related to the death.*

(Italics added).

Therefore, it appears that the requested abstracts of deaths occurring in 1998, 1999 and 2000 would constitute "death records" for purposes of section 552.115(a)(2) which would be excepted from disclosure. However, you tell us that the district has released to the requestor all of the information in the abstracts except the social security numbers of the decedents, and that the dates of birth were released from the abstracts because this information "would be available within a summary birth index." We therefore determine whether or not a social security number would be available to the public as information contained in either a "summary death index" or a "general death index."

Although the Public Information Act itself contains no language that defines the categories of information that comprise summary and general birth and death indexes under sections 552.115(a)(3) and (a)(4), the Texas Department of Health ("TDH") has promulgated administrative rules that provide for the content of such indexes. In pertinent part, the current rule, which took effect March 16, 2000, provides:

181.23. Indexes for Vital Records.

...

(c) Death indexes.

(1) A general death index maintained or established by the bureau of vital statistics or a local registration official shall be prepared by event year, in alphabetical order by surname of the registrant, followed by any given names or initials; the date of the event; the county of occurrence; *the registrant's social security number*, sex, and marital status; the name of the registrant's spouse, if applicable; and the state or local file number.

(2) A general death index is public information and available to the public to the extent the index relates to a death record that is public on or after the 25th anniversary of the date of death as shown on the record unless the fact of an adoption or paternity determination can be revealed or broken or if the index contains specific identifying information relating to the parents of the child who is the subject of an adoption placement. The bureau of vital statistics and local registration officials shall expunge or delete any state or local file numbers included in any general death 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.

(3) A summary death index maintained or established by the bureau of vital statistics or a local registration official shall be prepared by event year, in alphabetical order by surname of the registrant, followed by any given names or initials, the date of the event, the county of occurrence, and sex of the registrant.

25 TAC §181.23(c). (Italics added).

On this basis, it is clear that social security numbers are part of the information comprising a "general death index", and that such numbers must be withheld from the public until the 25th anniversary of the date of death of the decedent to whom such numbers belonged. Because the social security numbers in the requested abstracts are derived from death certificates of decedents who died within the last three years, and because they therefore constitute information that would be contained in a "general death index" which would not be available to the public in this case, we conclude that the district must withhold the social security numbers from the requestor pursuant to section 552.115(a)(3).¹ As we resolve your request under section 552.115, we need not address your inquiry with regard to section 552.101.

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

¹In support, we note that in adopting the rules relating to general death indexes, TDH responded to a public comment that requiring the inclusion of the social security number and the name of the surviving spouse in general death indexes would allow unscrupulous con artists to prey on loved ones of the deceased. According to TDH, "[s]ocial security numbers and the names of surviving spouses are currently included on death certificates which are public information by law 25 years after the date of death. General death indexes are public information only to the extent that they relate to death records that are public information. Requiring inclusion of the registrant's social security number and the name of the surviving spouse in general indexes for deaths which occurred less than 25 years ago will afford con artists no greater opportunity to victimize survivors of the deceased. No change was made as a result of this comment." 25 Tex. Reg. 2070 (2000).

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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 141550

Encl. Submitted documents

cc: Mr. Kevin Walsh
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P. O. Box 538
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(w/o enclosures)