



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 28, 2006

Mr. Marc Allen Connelly
Assistant General Counsel
Texas Department of State Health Services
1100 West 49th Street
Austin, Texas 78756

OR2006-01971

Dear Mr. Connelly:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 243231.

The Texas Department of State Health Services (the "department") received a request for information pertaining to a summary birth index for 2005 from Denton and Collin Counties. The requestor further specifies that the request encompasses the following:

- 1) the first, middle, and last name of the child, including any suffix;
- 2) the first, middle, and last name of the child's mother;
- 3) the child's sex;
- 4) the maiden name of the child's mother;
- 5) the mother's current address or zip code;
- 6) the mother's occupation;
- 7) the date and location of the child's mother's birth;
- 8) the child's date of birth; and
- 9) the hospital where the child was born.

You claim that the requested information is 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 representative sample of information.¹ We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

As a preliminary matter, we note that you have not submitted information responsive to the request for the summary birth index. Section 181.23(a) of title 25 of the Texas Administrative Code provides in part: "the state registrar shall establish and maintain an index of all vital records within the Bureau of Statistics." 25 T.A.C. § 181.23(a). Section 181.23 further specifies that the department shall maintain a summary birth index which 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." *Id.* § 181.23(b)(3). A summary birth index is public information. Gov't Code § 552.115(a)(4). Therefore, the department must release the summary birth index to the requestor. We note that the summary birth index contains some of the categories of information specified by the requestor.

We now address your arguments with respect to the remaining six categories of information. You state that the submitted information "contains information extracted from birth certificates, and birth information filed with a local registration official or with the Vitals Statistics Section of [the department] and do not fall within the specified time guidelines and, therefore, may not be disclosed." As noted above, section 181.23 of title 25 of the Texas Administrative Code prescribes the index information that must be compiled and maintained by the department. Section 552.115 governs the availability of birth records and birth indices maintained by the department and provides 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;

...

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(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)[.]

Gov't Code § 552.115(a)(1), (3). Section 181.23 specifies that a general birth index shall include parents' names in addition to the categories of information found in a summary birth index. Thus, the names of parents, as part of a general birth index, are excepted from disclosure under section 552.115(a)(3) unless the birth records to which they relate would be subject to release under section 552.115(a)(1). In this instance, the birth records to which the information pertains are not public information under section 552.115(a)(1). Therefore, the submitted parents' names must be withheld under section 552.115(a)(3).

The remaining four categories of information specified by the requestor are not included in either 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 four categories of information that comprise each type of birth index. Because the remaining four categories of information are not public information under section 552.115 and the above-referenced administrative rules do not provide for the release of this information, we believe this information is made confidential under section 552.101 of the Government Code, in conjunction with the above-referenced administrative rules.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the

Government Code. If the governmental body fails to do one of these things, 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 Dep't of Pub. 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 Hadassah Schloss at the Office of the Attorney General 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,



L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/segh

Ref: ID# 243231

Enc. Submitted documents

c: Mr. Stephen Argenbright
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(w/o enclosures)