



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 25, 2010

Mr. Bart E. Medley
County Attorney
Jeff Davis County
P.O. Box 201
Fort Davis, Texas 79734

OR2010-09361

Dear Mr. Medley:

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# 384187.

The Jeff Davis County Clerk (the "county clerk") received a request for the death certificate of a named individual. You claim that the requested information is excepted from disclosure under section 552.115 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments from the executor of the named individual's estate. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.115 of the Government Code provides in pertinent 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 [required disclosure], except that:

...

(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[.]

Id. § 552.115(a), (a)(2). Section 552.115 applies to a “death record” maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official. The submitted information indicates it is maintained by the county clerk, who is the local registration official. We note that none of the exceptions in section 552.115 apply in this instance. Accordingly, we conclude the submitted information is generally subject to section 552.115. *See* Health & Safety Code § 191.022(a) (providing that the duty of registering births and deaths may be transferred to the county clerk).

However, we note that the requestor, in his request for information, asserts the information at issue is subject to public disclosure pursuant to section 191.006 of the Local Government Code and section 193.001 of the Health and Safety Code. Accordingly, we will address the requestor’s arguments.

Section 191.006 of the Local Government Code pertains to public access to records belonging to the county clerk and states:

All records belonging to the office of the county clerk to which access is not otherwise restricted by law or by court order shall be open to the public at all reasonable times. A member of the public may make a copy of any of the records.

Local Gov’t Code § 191.006. The requestor asserts that, because the submitted information belongs to the county clerk, it is available to the public. We note, however, that section 191.006 makes publicly available information “to which access is not otherwise restricted by law or court order.” *See id.* Section 552.115 is a law that restricts access to the submitted information. Accordingly, we conclude section 191.006 is not applicable to the submitted information and it is not publicly available on that basis.

Next, the requestor seeks access to the information at issue under section 193.001 of the Health and Safety Code. Section 193.001 pertains to the form of death certificates and states, in relevant part:

(c) The [Texas Department of Health] shall require death certificates and fetal death certificates to include the name of the place and the specific number of the plot, crypt, lawn crypt, or niche in which a decedent’s remains will be interred or, if the remains will not be interred, the place and manner of other disposition.

(d) The bureau of vital statistics and each local registrar shall make the information provided under Subsection (c) available to the public and may charge a fee in an amount prescribed under Section 191.0045 for providing that service.

Health & Safety Code § 193.001(c), (d). Thus, section 193.001(d) grants a statutory right of access to the information listed in section 193.001(c) regarding the place and manner of the disposition of the decedent's remains. We note a statutory right of access generally prevails over the Act's general exceptions to disclosure. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). However, because section 552.115 of the Government Code has its own access provisions, we conclude section 552.115 is not a general exception under the Act. Gov't Code § 552.115(a)(2), (5); *see* Attorney General Opinions GA-0055 (2003) at 3-4 (where statute specifically authorizes release of information under certain circumstances or to particular entities, that information may only be released or transferred in accordance therewith), DM-353 (1995) at 4-5 n.6 (detailed provisions in state law for disclosure of records would not permit disclosure "to other governmental entities and officials . . . without violating the record's confidentiality"), JM-590 (1986) at 5 ("express mention or enumeration of one person, thing, consequence, or class is tantamount to an express exclusion of all others"). The release provisions of section 552.115 do not permit access in this case. Thus, in this case there is a statutory conflict between the right of access created by section 193.001(d) of the Health and Safety Code and the exception to disclosure found in section 552.115 of the Government Code. Where information falls within both a general and a specific statutory provision, the specific provision prevails over the general statute unless the general provision was enacted later and there is clear evidence that the legislature intended the general provision to prevail. *See* Gov't Code § 311.026(b); *Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones); Open Records Decision Nos. 598 (1991), 583 (1990), 451 (1986). Section 193.001(d) of the Health and Safety Code is a more specific statute than section 552.115 because section 193.001(d) applies specifically to the information listed in section 193.001(c), while section 552.115 applies generally to birth and death records. *See* Attorney General Opinion DM-146 (1992) (finding Health and Safety Code and regulations promulgated thereunder govern how death records are to be made available to public more specifically than predecessor to the Act). Further, section 552.115 and its statutory predecessor, article 6252-17a section 3(a)(15) of the Texas Civil Statutes, were enacted prior to the release provision in section 191.006(d).¹ Accordingly, we conclude the "name of the place and the specific number of the plot, crypt, lawn crypt, or niche in which a decedent's remains will be interred or, if the remains will not be interred, the place and manner of other disposition" contained in the submitted death certificate must be released pursuant to section 193.001(d) of the Health and Safety Code.

¹*See* Act of May 22, 1993, 73rd Leg., ch. 268, § 1, 1993 Tex. Gen. Laws 986 (enacting section 552.115 of the Government Code); Act of May 19, 1973, 63rd Leg., ch. 424, § 3, Tex. Gen. Laws 1112, *amended by* Act of June 11, 1987, 70th Leg., ch. 349, § 1, 1987 Tex. Gen. Laws 1770, *amended by* Act of June 14, 1989, 71st Leg., ch. 920, § 1, 1989 Tex. Gen. Laws 3951 (enacting and amending article 6252-17a section 3(a)(15)); Act of June 12, 1995, 74th Leg., ch. 502, § 2, 1995 (enacting section 193.001(d) of the Health and Safety Code).

The remaining information contained in the submitted death certificate is confidential under section 552.115 of the Government Code and must be withheld on that basis.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 384187

Enc. Submitted documents

c: Requestor
(w/o enclosures)