



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 19, 2010

Mr. Marc Allen Connelly
Deputy General Counsel
Texas Department of State Health Services
P.O. Box 149347
Austin, Texas 78714-9347

OR2010-10688

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# 387126 (DSHS # 17406/2010).

The Texas Department of State Health Services (the "department") received a request for names, dates of death, addresses, and identifier numbers of doctors or physician assistants who died during a specified time period. You state you have released some of the responsive information. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.115, 552.117, and 552.1175 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note, and you acknowledge, the department has not complied with the time periods prescribed by section 552.301 of the Government Code in seeking an open records decision from this office. When a governmental body fails to comply with the procedural requirements of section 552.301, the information at issue is presumed public and must be released unless there is a compelling reason to withhold it. *See Gov't Code* § 552.302;

¹We assume 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 those records contain substantially different types of information than that submitted to this office.

Simmons v. Kuzmich, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by a showing the information is made confidential by another source of law or affects third party interests. *See* Open Records Decision No. 150 at 2 (1977). Because sections 552.101, 552.115, 552.117, and 552.1175 of the Government Code can provide compelling reasons to withhold information, we will consider your arguments under these sections.

You assert the information you have marked within the submitted documents is excepted under section 552.115 of the Government Code. Section 552.115 excepts from disclosure death records held either by the department's bureau of vital statistics (the "bureau") or local registration officials. Section 552.115 provides in relevant part:

(a) A birth or death record maintained by the bureau of vital statistics of the Texas Department of Health² or a local registration official is excepted from [required public 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;

(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[.]

Gov't Code § 552.115(a)(2)-(4). You indicate the submitted information consists of information obtained from death records of the bureau. Death record information is not

²Act of Sept. 1, 2003, 78th Leg., R.S., ch. 198, § 1.01, 2003 Tex. Gen. Laws 611 (providing, among other things, that the Texas Department of Health is part of the department).

available to the public until the 25th anniversary of the date of death shown on the certificate. *Id.* § 552.115(a)(2). The only information from death records filed within the previous five years that is available to the public is information contained in the summary death index compiled by the bureau. *See id.* § 552.115(a)(4). Section 181.23 of title 25 of the Texas Administrative Code provides, in part:

(c) Death indexes.

...

(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.

See 25 T.A.C. § 181.23(c)(3). Thus, section 181.23 prescribes the format of death indexes required to be compiled and maintained by the bureau. In this instance, the requestor seeks the names, dates of death, addresses, and identifier numbers of certain individuals. The summary death index as prescribed by the above regulations contain the registrant's surname, given name or initials, and date of the event. Summary death indexes are declared in subsection (a) of section 552.115 of the Government Code to be "public information and available to the public." Gov't Code § 552.115(a). Thus, the registrants' surnames, given names, and dates of death in the submitted information are not excepted from required public disclosure under section 552.115 and must be released to the requestor.

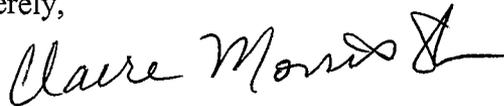
However, we note the submitted information also contains more information than would be contained within the summary death index as prescribed by section 181.23. We note the summary death index includes the county of death, but does not include addresses as sought by the requestor. *See* 25 T.A.C § 181.23(c)(3). We believe the purpose behind section 552.115 of the Government Code, that of preventing fraud, is one of the purposes behind the above-quoted administrative rules that dictate certain categories of information that comprise each type of death index. Because the remaining categories of information in the submitted 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, derived from or related to a source death record, is made confidential under section 552.101 of the Government Code in conjunction with the above-referenced administrative rules. Therefore, we find the department must withhold the information we have marked on this basis.³ The remaining information must be released.

³As our ruling is dispositive, we need not address the remaining argument against disclosure of the submitted information.

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/jb

Ref: ID# 387126

Enc. Submitted documents

c: Requestor
(w/o enclosures)