ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 9, 2010

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

OR2010-18444

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# 402565 (DSHS File No. 17949/2011).

The Texas Department of State Health Services (the "department") received a request for all Victoria County Death Records, including first names, last names, dates of birth, dates of death, and addresses. You claim the submitted information is excepted from disclosure under sections 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 failed to comply with the time periods prescribed by section 552.301 of the Government Code in seeking an open records decision from this office. *See* Gov't Code § 552.301(b), (e). When a governmental body fails to comply with the procedural requirements of section 552.301, the information at issue

[1]We 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.

is presumed public and must be released unless there is a compelling reason to withhold it. *See id.* § 552.302; *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 552.115, 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 state the submitted documents contain information drawn from records filed with a local registration official or the department's bureau of vital statistics (the "bureau"). You assert the requested information should be withheld under section 552.115 of the Government Code. This section excepts from disclosure death records held either by the bureau or local registration officials. Section 552.115 provides, in relevant part:

> (a) A . . . death record maintained by the bureau of vital statistics of the Texas Department of Health[2] or a local registration official is excepted from [required public disclosure], except that:
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> . . .
>
> (2) a death record is public information and available to the public on an 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 . . . (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[.]

[2]Act 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).

Gov't Code § 552.115(a)(2)-(4). You state the records you seek to withhold each relate to individuals whose date of death is less than 25 years old. However, section 552.115(a)(4) provides that summary death indexes are public information excluded from confidentiality under section 552.115(a). *See id.* § 552.115(a)(4). Although the Act does not define "summary death index," the department has issued administrative rules that define this term in section 181.23 of title 25 of the Texas Administrative Code.[3] Section 181.23 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. Although you state that the department does not maintain a specific summary death index as such, we understand from your description that the department does maintain a database that contains the information that would be included in a summary death index, from which such an index could be compiled. In this instance, the requestor seeks first and last names, dates of birth, dates of death, and addresses. The summary death index as prescribed by the above regulations contain the registrants' first and last names and dates of death. Summary death indexes are declared in subsection (a) of section 552.115 to be "public information and available to the public." *See* Gov't Code § 552.115(a)(4). Thus, pursuant to section 552.115(a)(4), the first and last names and dates of death in the submitted records are not excepted from required public disclosure under section 552.115(a). As you have not raised any other exceptions for this information, it 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). The summary death index also does not include the requested dates of birth. We believe the purpose behind section 552.115 of the

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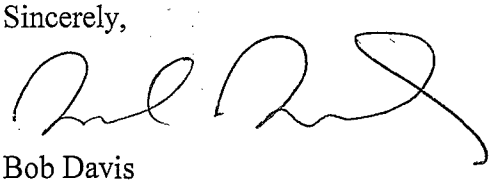
[3]Generally, a governmental body may not issue a rule that makes confidential information that is otherwise subject to public disclosure under the Act. *See* Open Record Decision Nos. 484 (1987), 392 (1983). However, this office has found that the legislature granted specific authority to the Texas Department of Health to issue administrative rules regarding the public availability of information contained in or derived from vital records. *See* Open Records Decision No. 596 (1991).

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 552.115(a) of the Government Code. Therefore, the department must withhold the information we have marked on this basis.[4]

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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/tf

Ref: ID# 402565

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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[4]As our ruling is dispositive, we need not address your remaining raised exceptions to disclosure.