



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 28, 2011

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

OR2011-02883

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# 410259 (DSHS File 18350/2011).

The Texas Department of State Health Services (the "department") received a request for information related to infants less than two years old whose cause of death was suffocation, asphyxia, Sudden Infant Death Syndrome, or accident, during a specified period, as well as deaths that include the word "bumper" in the cause of death or findings. You state the department has released some information to the requestor. You claim the portions of the submitted information you marked are excepted from disclosure under sections 552.101 and 552.115 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information, which we understand to be a representative sample.<sup>2</sup>

---

<sup>1</sup>While you do not explicitly raise section 552.101 of the Government Code in your brief, based on your arguments we understand you to assert section 552.101.

<sup>2</sup>We 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 that those records contain substantially different types of information than that submitted to this office.

Initially, we note a portion of the submitted information, which we have marked, is not responsive to the request because it was created after the request was received by the department. This ruling does not address the public availability of the information that is not responsive to the request, and the department is not required to release this information in response to this request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dismissed).

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information protected by other statutes. You assert the form you marked is confidential under section 264.511 of the Family Code. Subchapter F of chapter 264 concerns the review and investigation of child fatalities. Section 264.511 states, in pertinent part:

(a) Information and records acquired by the [Child Fatality Review Team Committee (the “committee”)] or by a review team in the exercise of its purpose and duties under this subchapter are confidential and exempt from disclosure under the [Act] and may only be disclosed as necessary to carry out the committee’s or review team’s purpose and duties.

Fam. Code § 264.511(a). You explain the submitted form is used to facilitate the entry of data collected by local child fatality review teams into the national online database, which the committee accesses to generate published reports. Thus, we find this document is acquired by the committee in the exercise of its purpose and duties under subchapter F of chapter 264 of the Family Code. Accordingly, we agree that this information is confidential under section 264.511(a) of the Family Code and must be withheld from public disclosure pursuant to section 552.101 of the Government Code.

Next, you raise section 552.115 of the Government Code for the remaining marked information. This section 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 . . . death record maintained by the bureau of vital statistics of the Texas Department of Health<sup>3</sup> or a local registration official is excepted from [required public disclosure], except that:

...

---

<sup>3</sup>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).

(2) a death record is public information and available to the public on or 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[.]

Gov't Code § 552.115(a)(2)-(4). The remaining information consists of a spreadsheet listing the date of death, county of death, International Statistical Classification of Diseases and Related Health Problems code, and underlying cause of death for infant deaths in Texas. This information relates 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.<sup>4</sup> 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.

---

<sup>4</sup>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).

*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. We understand the department maintains 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 certain infants' cause of death, date of death, and county of death. The summary death index as prescribed by the above regulations contain the registrants' dates and counties 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 dates of death and counties of death in the submitted spreadsheet 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 information at issue also contains more information than would be contained within the summary death index as prescribed by section 181.23. Specifically, the summary death index does not include the cause of death information 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, 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 marked on this basis.

In summary, the department must withhold the form you marked under section 552.101 of the Government Code in conjunction with section 264.511 of the Family Code. The department must also withhold the information we marked on the submitted spreadsheet under section 552.115(a) of the Government Code. The remaining information in the spreadsheet, however, must be released pursuant to section 552.115(a)(4) of the Government Code.

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](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,

A handwritten signature in black ink, appearing to read "Bob Davis", written in a cursive style.

Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/tf

Ref: ID# 410259

Enc. Submitted documents

c: Requestor  
(w/o enclosures)