



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 2, 2011

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

OR2011-16101

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# 435050.

The Texas Department of State Health Services (the “department”) received a request for the first name, last name, date of death, county of occurrence, and sex of individuals registered under specified cause of death codes from 2009 to the date of the request. You claim that a portion of the submitted information is excepted from disclosure under section 552.115 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, you acknowledge that the department failed to meet the deadlines prescribed by section 552.301 of the Government Code in requesting an open records decision from our office. Gov’t Code § 552.301(b). Pursuant to section 552.302 of the Government Code, a governmental body’s failure to comply with the requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort

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<sup>1</sup>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.

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). The presumption that information is public under section 552.302 can be overcome by demonstrating that the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). Because section 552.115 can provide a compelling reason for non-disclosure, we will consider the applicability of this exception to the information at issue.

You raise section 552.115 of the Government Code for the 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>2</sup> 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 . . . (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 submitted information consists of the first name, last name, date of death, county of occurrence, and sex, as well as the death codes for deceased individuals. 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

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<sup>2</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).

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>3</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.

*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 the first name, last name, date of death, and county of death for individuals with specified causes of death. The summary death index as prescribed by the above regulations contains the registrant’s surname, given name or initials, the date of the event, the county of occurrence, and the sex of the registrant. 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), first names, last names, dates of death, and counties of death in the submitted spreadsheet are not excepted from required public disclosure under section 552.115(a).

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 category of information in the submitted information is not public information under section 552.115, and the above-referenced administrative rules do not provide for the release of this information, this information,

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<sup>3</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).

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 you marked on this basis. The remaining information must be released.

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 'VB', with a long horizontal flourish extending to the right.

Vanessa Burgess  
Assistant Attorney General  
Open Records Division

VB/dls

Ref: ID# 435050

Enc. Submitted documents

c: Requestor  
(w/o enclosures)