



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 30, 2012

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

OR2012-13777

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# 463948 (DSHS File No. 20453/2012).

The Texas Department of State Health Services (the "department") received a request for a list of individuals who died in Texas during a specified time period as a result of accidents, including the date of death, county case number, decedent's name, decedent's date of birth or age, manner of death, address, sex, and race. You claim some 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 information.

You raise section 552.115 of the Government Code for the information you have marked. 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>1</sup> or a local registration official is excepted from [required public disclosure], except that:

. . .

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<sup>1</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 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 decedent's name, the date of death; age and age units; the city, county, and zip code of residence of the decedent; the state in which death occurred; the manner of death; the local file number; and race of the decedent. 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>2</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. You state the department maintains a database that contains the information that would be included in a summary death index,

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<sup>2</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).

from which such an index could be compiled. 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), dates of death, and the name and sex of the decedent in the submitted information are not excepted from required public disclosure under section 552.115(a).

However, you note, and we agree, the information at issue contains more information than would be contained within the summary death index as prescribed by section 181.23. A summary death index does not include the address, age, or race of the decedent, manner of death, cause of death, or state of death. 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 you have marked, as well as the additional information we have marked, under section 552.115(a) of the Government Code. As you raise no further exceptions to disclosure, 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,



Jennifer Burnett  
Assistant Attorney General  
Open Records Division

JB/tch

Ref: ID# 463948

Enc. Submitted documents

c: Requestor  
(w/o enclosures)