



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 16, 2016

Ms. Barbara L. Klein
Deputy General Counsel
Texas Department of State Health Services
P.O. Box 149347
Austin, Texas 78714-9347

OR2016-18541

Dear Ms. Klein:

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# 622750 (DSHS OR File No. 25744/2016).

The Texas Department of State Health Services (the "department") received a request for the birth record and related documents pertaining to the requestor's client.¹ You state you will release some information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.115 of the Government Code.² You also state you notified the Health and Human Services Commission's Office of the Inspector General (the "OIG") of the request for information. *See* Gov't Code § 552.304 (interested third party may submit comments stating why information should or should not be released). We have not received comments from the OIG. We have considered the exceptions you claim and reviewed the submitted information.

¹You indicate the department sought and received clarification of the request for information. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

²We note the department did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b), (e). Nevertheless, because sections 552.101 and 552.115 of the Government Code and third-party interests can provide compelling reasons to overcome the presumption of openness, we will consider the submitted arguments for the submitted information. *See id.* §§ 552.007, .302, .352.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. This section encompasses information protected by other statutes, including section 531.1021 of the Government Code, which provides, in relevant part:

(g) All information and materials subpoenaed or compiled by the [OIG]³ in connection with an audit or investigation or by the office of the attorney general in connection with a Medicaid fraud investigation are confidential and not subject to disclosure under [the Act], and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the [OIG] or the attorney general or their employees or agents involved in the audit or investigation conducted by the [OIG] or the attorney general, except that this information may be disclosed to the state auditor’s office, law enforcement agencies, and other entities as permitted by other law.

(h) A person who receives information under Subsection (g) may disclose the information only in accordance with Subsection (g) and in a manner that is consistent with the authorized purpose for which the person first received the information.

Id. § 531.1021(g), (h). You state the information at issue was created or compiled by the OIG in connection with an investigation concerning alleged vital statistics fraud. Based on your representation and our review, we find the department must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 531.1021(g) of the Government Code.⁴

Section 552.115 of the Government Code provides, in pertinent part,

(a) A birth or death record maintained by the vital statistics unit of the [department] or a local registration official is excepted from [required disclosure], except that:

(1) a birth record is public information and available to the public on and after the 75th anniversary of the date of birth as shown on the record filed with the vital statistics unit or local registration official[.]

Id. § 552.115(a)(1). You state the remaining information is maintained by the department’s vital statistics unit. Further, the 75th anniversary of the date of birth has not yet occurred.

³We note the Health and Human Services Commission directly oversees the department.

⁴As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Accordingly, the department must withhold the submitted birth certificate and addendum, which we have marked, under section 552.115 of the Government Code. However, you have not demonstrated any of the remaining information constitutes birth records made confidential by section 552.115 of the Government Code. *See id.*; *cf.* 25 T.A.C. § 181.1(2) (defining birth records for the purposes of chapter 181 of title 25 of the Texas Administrative Code as “[r]ecords governing births filed pursuant to the Texas Vital Statistics Act, the Health and Safety Code, Title 3”). Accordingly, the department may not withhold any of the remaining information on that basis.

You argue the remaining information is subject to section 191.057 of the Health and Safety Code, which is encompassed by section 552.101 of the Government Code. Section 191.051 provides “the state registrar shall supply to a properly qualified applicant, on request, a certified copy of a record, or part of a record, of a birth, death, or fetal death registered under [title 3 of the Health and Safety Code].” Health & Safety Code § 191.051. You assert the information at issue is confidential under section 191.057(b), which provides, “If the vital statistics unit . . . receives an application for a certified copy of a birth, death, or fetal death record to which an addendum has been attached under Section 191.033, . . . the state registrar may refuse to issue a certified copy of the record or part of the record to the applicant.” *Id.* § 191.057(b); *see also id.* § 191.033(a) (providing “state registrar may attach to the original record an addendum that sets out any information received by the state registrar that may contradict the information in a birth, death, or fetal death record required to be maintained in the vital statistics unit”). However, upon our review, we find you have not demonstrated any of the remaining information constitutes a record, or part of a record, of a birth, death, or fetal death for the purposes of section 191.057 of the Health and Safety Code. *Cf.* 25 T.A.C. § 181.1(2). Accordingly, the department may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 191.057(b).

In summary, the department must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 531.1021(g) of the Government Code. The department must withhold the submitted birth certificate and addendum, which we have marked, under section 552.115 of the Government Code. The remaining information must be released.⁵

⁵We note the information being released contains the date of birth and motor vehicle record information of the requestor’s client to which the requestor has a right of access under section 552.023 of the Government Code. *See Gov’t Code* § 552.023(a) (“person or person’s authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person’s privacy interests”); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves).

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Matthew Taylor
Assistant Attorney General
Open Records Division

MHT/dls

Ref: ID# 622750

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)