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RQ 104

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June 19, 1991

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Opinion Committee

The Honorable Dan Morales  
Attorney General of Texas  
Supreme Court Building  
Austin, Texas 78701

Re: Application of ORD No. 529 to AIDS Information on  
Death Certificates

Dear General Morales:

This is a request for an Attorney General's Opinion concerning a question of law and is being made under authority of Sec. .02.042(b)(2) of the Texas Government Code, V.T.C.A.

Open Records Decision No. 529, issued by the Attorney General on October 2, 1991, concerns the question of whether the Communicable Disease Prevention and Control Act, Chapter 81, Subchapter F, Health and Safety Code, prohibits public disclosure of AIDS test results included in an autopsy report. The Attorney General ruled that AIDS test results in autopsy reports are open to the public.

The Department of Health needs to know if the rationale applied by the Attorney General in ORD No. 529 applies to AIDS information on death certificates. The Department has the following statutory authority and responsibility concerning death certificates.

(1) Under Section 193.001, Health and Safety Code, the Department prescribes the form and content of death certificates (Enclosure A is a sample death certificate). The Section of the form titled, "CAUSE OF DEATH", may list AIDS or HIV infection as the cause of death in an individual case.

(2) Under Section 191.051, Health and Safety Code, the Department's State Registrar shall supply to a "properly qualified applicant" upon request a certified copy of a death certificate, subject to Board of Health rules controlling the accessibility of vital records. The only Board rules controlling accessibility of death records is 25 TAC, §181.1 which defines "properly qualified applicant" (Enclosure B).

Re: Application of ORD 529

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(3) Under the Open Records Act (ORA), Article 6252-17a, Sec. 3(a)(15), V.T.C.S., death records are confidential except that the department's custodian has the discretion to make the records open to the public.

The Department's question is as follows: May a qualified applicant for a certified copy of a death certificate receive the entire copy if the cause of death lists AIDS or HIV infection, or may this information be released only to the persons or entities listed in Sec. 81.103 of the Health and Safety Code?

Your consideration of this request will be appreciated. ORD No. 529 contains a thorough discussion of the confidentiality issues involved in releasing AIDS information, but please notify Dan LaFleur in the Department's Office of General Counsel at (512) 458-7236, if you have questions or need additional information.

Sincerely,



Robert A. MacLean,  
Acting Commissioner of Health

Enclosures

STATE OF TEXAS

CERTIFICATE OF DEATH

STATE FILE NO.

1 NAME OF DECEASED (a) First (b) Middle (c) Last			(d) Maiden		2 SEX	3 DATE OF DEATH		
4 RACE	5a WAS THE DECEDENT OF HISPANIC ORIGIN? <input type="checkbox"/> YES <input type="checkbox"/> NO		5b IF YES, SPECIFY (Mexican, Cuban, Puerto Rican, etc.)		6 DATE OF BIRTH	7 AGE (In years last birthday)	IF UNDER 1 YEAR Months Days	IF UNDER 24 HRS Hours Minutes
8 SOCIAL SECURITY NUMBER			9a PLACE OF DEATH (Check only one) HOSPITAL <input type="checkbox"/> Inpatient <input type="checkbox"/> ER/Outpatient <input type="checkbox"/> OOA OTHER <input type="checkbox"/> Nursing Home <input type="checkbox"/> Residence <input type="checkbox"/> Other (Specify)					
9b PLACE OF DEATH - COUNTY		9c CITY OR TOWN (If outside city limits, give precinct number)		9d NAME OF (If not in hospital, give street address) HOSPITAL OR INSTITUTION			9e INSIDE CITY LIMITS? <input type="checkbox"/> YES <input type="checkbox"/> NO	
10 BIRTHPLACE (City and State or foreign country)		11 CITIZEN OF WHAT COUNTRY?	12 WAS DECEDENT EVER IN U.S. ARMED FORCES? <input type="checkbox"/> YES <input type="checkbox"/> NO		13 <input type="checkbox"/> MARRIED <input type="checkbox"/> NEVER MARRIED <input type="checkbox"/> WIDOWED <input type="checkbox"/> DIVORCED		14 SURVIVING SPOUSE (If wife, give maiden name)	
15 DECEDENT'S EDUCATION (Highest grade completed) Grades (0-12) College (1-4 or 5+)			16a USUAL OCCUPATION (Give kind of work done during most of working life. Do not use retired)			16b KIND OF BUSINESS OR INDUSTRY		
17a RESIDENCE - STATE		17b COUNTY		17c CITY OR TOWN, (If outside city limits, show rural) ZIP CODE				
17d STREET ADDRESS (If rural, give location)							17e INSIDE CITY LIMITS? <input type="checkbox"/> YES <input type="checkbox"/> NO	
18 FATHER'S NAME				19 MOTHER'S MAIDEN NAME				
20a SIGNATURE OF INFORMANT				20b MAILING ADDRESS OF INFORMANT (Street and Number or Rural Route Number, City or Town, State, Zip Code)				
21 MANNER OF DEATH <input type="checkbox"/> Natural <input type="checkbox"/> Pending Investigation <input type="checkbox"/> Accident <input type="checkbox"/> Suicide <input type="checkbox"/> Homicide		22a DATE OF INJURY (Month, Day, Year)	22b TIME OF INJURY	22c INJURY AT WORK? <input type="checkbox"/> YES <input type="checkbox"/> NO		22d DESCRIBE HOW INJURY OCCURRED		
22e PLACE OF INJURY - At home, farm, street, factory, office building, etc. (Specify)			22f LOCATION (Street and Number or Rural Route Number, City or Town, State)					
CERTIFIER To be completed by CERTIFYING PHYSICIAN only	23a To the best of my knowledge, death occurred at the time, date, and place, and due to the cause(s) and manner as stated (Signature and Title)			24a On the basis of examination and/or investigation, in my opinion death occurred at the time, date, and place, and due to the cause(s) and manner as stated. (Signature and Title)				
	23b DATE SIGNED (Mo., Day, Yr.)		23c HOUR OF DEATH		24b DATE SIGNED (Mo., Day, Yr.)		24c HOUR OF DEATH	
	23d NAME OF CERTIFYING PHYSICIAN (Type or print)			24d PRONOUNCED DEAD (Mo., Day, Yr.)		24e PRONOUNCED DEAD (Hour)		
				ON		AT		
25 MAILING ADDRESS OF CERTIFIER (Type or Print)								
26a METHOD OF DISPOSITION <input type="checkbox"/> Burial <input type="checkbox"/> Cremation <input type="checkbox"/> Removal from State <input type="checkbox"/> Donation <input type="checkbox"/> Other (Specify)				26b PLACE OF DISPOSITION (Name of cemetery, crematory or other place)				
26c LOCATION - City or Town, State			26d DATE OF DISPOSITION		26e SIGNATURE OF FUNERAL DIRECTOR OR PERSON ACTING AS SUCH			
26f NAME AND ADDRESS OF FUNERAL HOME								
27a REGISTRAR'S FILE NO.		27b DATE REC'D BY LOCAL REGISTRAR		27c SIGNATURE OF LOCAL REGISTRAR				

VS-112 REV. 12/89

CAUSE OF DEATH	28 PART I: Enter the diseases, injuries, or complications that caused the death. Do not enter the mode of dying, such as cardiac or respiratory arrest, shock, or heart failure. List only one cause on each line.		Approximate Interval Between Onset and Death	
	IMMEDIATE CAUSE (Final disease or condition resulting in death) → a	DUE TO (OR AS A LIKELY CONSEQUENCE OF)		
	Sequentially list conditions, if any, leading to immediate cause. Enter UNDERLYING CAUSE (Disease or injury that initiated events resulting in death) LAST	b		DUE TO (OR AS A LIKELY CONSEQUENCE OF)
		c		DUE TO (OR AS A LIKELY CONSEQUENCE OF)
PART II: Other significant conditions contributing to death but not resulting in the underlying cause given in Part I			30a WAS AN AUTOPSY PERFORMED? <input type="checkbox"/> YES <input type="checkbox"/> NO	
29a Was decedent pregnant at time of death? <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNKNOWN		29b Was decedent pregnant during the last 12 months? <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNKNOWN		
			30b WERE AUTOPSY FINDINGS AVAILABLE PRIOR TO COMPLETION OF CAUSE OF DEATH? <input type="checkbox"/> YES <input type="checkbox"/> NO	

Other accounts in budget determined that for the first five years that the proposed sections are in effect there will be no fiscal implications for the state or local government as a result of enforcing or administering the sections.

Mr. Seale also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to update and clarify the sections. There will be no effect on small businesses as a result of enforcing the sections. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. There also will be no effect on local employment.

Comments on the proposed amendments may be submitted to Richard B. Bays, Chief, Bureau of Vital Statistics, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3191 (telephone (512) 458-7692). Comments will be accepted for a period of 30 days following publication in the *Texas Register*.

The amendments are proposed under the Texas Health and Safety Code, §191.003, which provides the Texas Board of Health with the authority to adopt rules concerning vital statistics; and §12.001, which provides the board with the authority to adopt rules to implement every duty imposed by law on the board, the department, and the commissioner of health.

**§181.1 Definitions.** The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

**Applicant**—See definition for properly qualified applicant.

**Birth records**—Records governing births filed pursuant to Texas Vital Statistics Act, Health and Safety Code, Title 3.

**Bureau of Vital Statistics**—The office within the Texas Department of Health charged with the implementation of the Texas Vital Statistics Law.

**Certification**—A certified statement, form, or letter, of the facts stated on the form or document as filed in the Bureau of Vital Statistics, certified by the state registrar or his duly appointed designee, over his respective signature and bearing the seal of the Bureau of Vital Statistics.

**Certified copy**—An exact photocopy of the original record issued on a special form and paper as filed with the Bureau of Vital Statistics, bearing the seal of the State of Texas, the Texas Department of Health, and the facsimile signature of the state registrar.

**Death records**—Records governing deaths and fetal deaths filed pursuant to the Texas Vital Statistics Act.

**Department**—The Texas Department of Health.

**Embalming**—The act of disinfecting or preserving a human body, entire or in part, by the use of chemical substances, fluids, or gases in the body; or by the introduction of the same into

the body by vascular or hypodermic injection; or by direct application into the organs or cavities; or by any other method intended to disinfect or preserve a dead body or restore body tissues and structures.

**Fetal death (stillbirth)**—Death prior to the complete expulsion or extraction from its mother of a product of conception, irrespective of the duration of pregnancy; the death is indicated by the fact that after such separation, the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles.

**Genealogist**—An individual who traces the descent of persons or families. He or she may be an individual family member or a person hired by the family to trace a family tree or do family research.

**Identification required of applicant**—A picture ID such as drivers license, state/city/county ID card, student ID, employment badge or card, or military ID; or two documents, without a picture, one of which must bear the signature of the applicant in place prior to submission.

**Immediate family member**—A persons' parent(s), child, sibling(s), spouse, grandparent(s), legal guardian, or conservator.

**Indexes**—An index to or listing of birth records.

**Legal representative (personal representative or agent)**—Any individual, attorney, funeral director, or other representative acting under contract for the requestor, when the requestor is not the applicant; or is one bearing an affidavit, authorizing that person, agent, genealogist, or other representative to make application on behalf of the registrant or member of the immediate family for the record or information requested.

**Local registration official**—A county clerk or person authorized by the Vital Statistics Act to maintain a duplicate system of records for each birth, death, or fetal death that occurs in the person's jurisdiction.

**Properly qualified applicant (qualified applicant)**—A legal representative, personal representative or agent, an immediate family member, or the registrant, who has a direct and tangible interest in the record and who shall have a significant legal relationship to the person whose record is requested. The purpose for which the certified copy is needed and the relationship of the applicant to the registrant is essential to the application to determine if the applicant is properly qualified.

**Registrant**—The individual named on the certificate of birth, death, or fetal death; application for marriage license; or report of divorce or annulment of marriage.

**Research copy**—A plain paper non-

certified reproduction of the complete original document or a portion of the original document.

**Search**—The act of examining the files and/or indexes maintained by the Bureau of Vital Statistics for a specific record or information as identified by a qualified applicant or his or her agent.

**Signature**—The name of a person written with his or her own hand; the act of signing one's own name.

**State registrar**—The chief of the Bureau of Vital Statistics, Texas Department of Health.

**Verification**—A non-certified statement only of facts and information stated on the document filed with the Bureau of Vital Statistics.

**Vital statistics**—The registration, preparation, transcription, collection, compilation, and preservation of data pertaining to births, adoptions, legitimations, deaths, fetal deaths [still births], marital status, and data incidental thereto.

**Vital Statistics Act**—Health and Safety Code, Title 3.

### §181.3. Transportation of Dead Bodies.

(a) Bodies shipped by common carrier.

(1) Any body shipped by common carrier must be [thoroughly embalmed by a licensed embalmer in a manner approved by the State Board of Embalming and] placed in either:

(A)-(B) (No change.)

(2) If the body is not [cannot be] embalmed or is in a state of decomposition, it may be shipped only after enclosure in an air-tight metal casket encased in a strong outside shipping case or in a sound casket encased in an air-tight metal or metal lined shipping case.

(3) Shipping containers and requirements for the shipping of dead bodies must meet or exceed any requirement imposed by the shipping company, the receiving state, or foreign country. [When any body is to be transported by common carrier, the burial-transit permit shall be enclosed in a strong envelope and attached to the shipping case. No separate transit permit shall be required.]

(4) When any body is to be transported by common carrier, the burial-transit permit shall be enclosed in a strong envelope and attached to the shipping case. No separate transit permit shall be required.

(b) Bodies transported by means other than common carrier.

(1) (No change.)

(2) If a dead body is to be transported by means other than a common carrier and for a purpose other than