



April 18, 2001

Ms. Sara Jackson
County Clerk
Grayson County
100 W. Houston, Suite #17
Sherman, Texas 75090

OR2001-1548

Dear Ms. Jackson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146171.

The Grayson County Clerk (the "clerk") received a request for "copies of all notifications forwarded by the Deputy County Clerk Tara Wall to the Texas Department of Health and/or State Registrar and all responses made thereto, not only from the Texas Department of Health and/or State Registrar, but also from the Attorney General's Office and the undertakers/funeral homes/burial agents who were the subjects of the reports and complaints." You have released some of the responsive information to the requestor. You have submitted documents titled a "Report of Death" and "Authority to Cremate" which you claim are excepted from disclosure under section 552.115 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.115 provides in pertinent part:

(a) A birth or *death record* maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official is excepted from [required 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[.]

(emphasis added). Section 552.115 applies to a “death record” maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official. Assuming that the county clerk is the local registration official, we agree that death certificates maintained by the county clerk are excepted from disclosure under section 552.115. *See* Health & Safety Code § 191.022(a) (providing that the duty of registering births and deaths may be transferred to the county clerk). However, we must determine whether the submitted documents fall under the definition of a “death record.”

The term “death record” is not defined in the Public Information Act or the Vital Statistics Act, Title 3 of the Health and Safety Code. Chapter 193 of the Health and Safety Code is titled “Death Records” but its provisions pertain only to death certificates. Chapter 181 of title 25 of the Texas Administrative Code pertains to Vital Statistics and defines death records as “records governing deaths and fetal deaths filed pursuant to the Texas Vital Statistics Act.” 25 T.A.C. § 181.1(7).

The submitted “Reports of Death” are required by section 181.2 of title 25 of the Texas Administrative Code, which provides that a funeral director that first assumes custody of a dead body shall within 24 hours transmit a report of death to the local registrar. 25 T.A.C. § 181.2(a). The report of death form is prescribed by the Department of Health. *Id.* Further, section 191.024(a) of the Health and Safety Code provides that a funeral director who has information relating to a death shall supply the information on a form provided by the Department of Health. Accordingly, we conclude that the “Reports of Death” are records governing deaths filed pursuant to the Vital Statistics Act. Therefore, the “Reports of Death” are death records that the clerk must withhold from disclosure under section 552.115 of the Government Code.

However, an “Authority to Cremate” is a certificate that is signed by the justice of the peace pursuant to article 49.09 of the Code of Criminal Procedure. In order to cremate a body that is subject to an inquest under article 49.04, a justice of a peace must sign a certificate indicating that an autopsy was performed or that an autopsy was unnecessary. Crim. Proc. Code art. 49.09(b). Because the “Authority to Cremate” was not filed pursuant to the Vital Statistics Act, we conclude that this document does not fall under the definition of a “death record.” Accordingly, we find that the “Authority to Cremate” is not excepted under section 552.115.

In summary, as you raise no other exception to disclosure, other than section 552.115 which we find is inapplicable, we conclude that you must release the “Authority to Cremate.” However, you must withhold the “Reports of Death” and death certificates under section 552.115 of the Government Code.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jennifer Bialek".

Jennifer H. Bialek
Assistant Attorney General
Open Records Division

JHB/rr

Ref: ID# 146171

Encl: Submitted documents

cc: Mr. Robert E. Richardson, Jr.
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(w/o enclosures)