ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 15, 2005

Mr. Marc Allen Connelly
Assistant General Counsel
Texas Department of State Health Services
1100 West 49th Street
Austin, Texas 78756

OR2005-10285

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# 236323.

The Texas Department of State Health Services (the "department") received a request for the following information "[f]or all deaths in the state of Texas from 1999 to the present:" the first name and last name of the decedent; the last known address of the decedent, including street address, city, state, and zip code; the date of birth of the decedent; the date of death of the decedent; and the "ICD-10 Cause of Death Code" for the decedent. You claim that 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.[1]

Section 552.115 of the Government Code excepts from disclosure death records held either by the department unit functioning as its bureau of vital statistics (the "bureau") or local registration officials. Section 552.115 provides in relevant part:

> (a) A birth or death record maintained by the bureau of vital statistics of the Texas Department of Health[2] or a local registration official is excepted from [required public disclosure], except that:

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[1]We assume that the 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.

[2]We note that the Texas Department of Health became part of the Texas Department of State Health Services on September 1, 2004. *See* http:// www.tdh.state.tx.us; *see also* Acts 2003, 78th Leg., R.S., ch. 198, eff. Sept. 1, 2003.

> (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 bureau of vital statistics or local registration official;
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> (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;
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> (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 (1) or (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)(1)-(4). You assert the submitted documents "contain copies of death information filed with" the bureau or a local registration official. However, upon review of your arguments and our review of the submitted information, we find the submitted compilation of information does not constitute a "death record" as contemplated by section 552.115. *See id.* § 552.115(a)(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); *see also* Open Records Decision 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to the public). Furthermore, upon review of the submitted information, we find that it is not a summary death index compiled by the bureau or a local registration official. *See id.* § 552.115(a)(4); 25 T.A.C. § 181.23(c)(3) (describing information included in a summary death index maintained or established by the bureau or a local registration official). Accordingly, we find that the department has not demonstrated that the submitted information is excepted by section 552.115. As you have not raised any other exceptions to disclosure under the Act, the requested information must be released.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Dep't of Pub. 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 Office of the Attorney General 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,

Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/krl

Ref: ID# 236323

Enc. Submitted documents

c: Mr. Patrick Walsh
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(w/o enclosures)