



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 27, 2011

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

OR2011-05755

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# 415610 (DSHS File: 18540-2011).

The Texas Department of State Health Services (the "department") received a request for the records for all children born on September 11, 2001 in Harris, Brazoria, Fort Bend, Montgomery, Galveston, and Waller counties, including the mothers' names and times of births.<sup>1</sup> You state you will release some of the responsive information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.115 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information, a portion of which consists of a representative sample.<sup>2</sup>

Section 552.115 of the Government Code excepts from disclosure certain birth and death records held by local registration officials. Section 552.115 provides in relevant part:

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<sup>1</sup>You note that the department received a clarification of the information requested. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

<sup>2</sup>We assume that the "representative 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.

(a) A birth . . . record maintained by the bureau of vital statistics of the Texas Department of Health<sup>3</sup> or a local registration official is excepted from [required public 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 bureau of vital statistics or local registration official;

...

(3) a general birth 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 . . . that is public information and available to the public under Subdivision (1) . . . ;

(4) a summary birth index . . . prepared or maintained by the bureau of vital statistics or a local registration official is public information and available to the public[.]

...

(b) Notwithstanding Subsection (a), a general birth index or a summary birth index is not public information and is not available to the public if:

(1) the fact of an adoption or paternity determination can be revealed by the index; or

(2) the index contains specific identifying information relating to the parents of a child who is the subject of an adoption placement.

Gov't Code § 552.115(a)(1)-(4), (b). The indexes you have submitted consist of information that we understand was derived from birth records created and maintained by the department's bureau of vital statistics (the "bureau"). Section 181.23 of title 25 of the Texas Administrative Code, provides, in part:

(b) Birth indexes.

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<sup>3</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).

(1) General birth indexes 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, the state or local file number, the name of the father, the maiden name of the mother, and sex of the registrant.

(2) A general birth index is public information and available to the public to the extent the index relates to a birth record that is public on or after the 75th anniversary of the date of birth as shown on the record unless the fact of an adoption or paternity determination can be revealed or broken or if the index contains specific identifying information relating to the parents of the child who is the subject of an adoption placement. . . .

(3) A summary birth 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. A summary birth index or any listings of birth records are not available to the public for searching or inspection if the fact of adoption or paternity determination can be revealed from specific identifying information.

25 T.A.C. § 181.23(b). Thus, section 181.23 of title 25 of the Texas Administrative Code prescribes the format of general and summary birth indexes required to be compiled and maintained by the bureau and local registrars. We note that, although the submitted indexes do not comply with the specific requirements for the format of birth indexes promulgated by section 181.23, they do contain some of the categories of information specified in these regulations. The summary indexes as prescribed by the above regulations contain the registrant's surname, given name or initials, date of the event, and county of the occurrence. Summary birth indexes are declared in subsection (a) of section 552.115 to be "public information and available to the public." Gov't Code § 552.115(a)(3). Thus, unless section 552.115(b) is applicable, the above-stated categories of information in the submitted indexes are not excepted from required public disclosure under section 552.115 and must be released to the requestor.

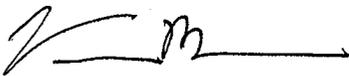
However, we also note that the submitted indexes contain more information than would be contained within a summary birth index. Section 181.23(b)(1) specifies that a general birth index shall include the maiden name of the mother in addition to the categories of information found in a summary birth index. *See* 25 T.A.C. § 181.23(b)(1). We will therefore determine whether the remaining information must be withheld under section 552.115 as part of a general birth index.

Section 552.115(a)(3) provides that a general birth index is public information to the extent the index relates to a birth record that would be subject to release under section 552.115(a)(1). *See* Gov't Code § 552.115(a)(3). Some of the remaining information contained in the submitted birth indexes, specifically, the maiden names of the mothers, is general index information that relates to birth records that are not public under 552.115(a)(1) because 75 years have not yet passed since the birth of the registrants. *See id.* § 552.115(a)(1). Therefore, this information, which we have marked, is excepted from disclosure and must be withheld under section 552.115(a) of the Government Code. You generally assert release of the mother's first name and middle name, as well as the time of the child's birth, may reveal identifying information such as an adoption or paternity. However, upon review, we find the documents do not reflect, and you have not adequately explained, how the remaining information at issue reveals an adoption or paternity. 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,



Vanessa Burgess  
Assistant Attorney General  
Open Records Division

VB/dls

Ref: ID# 415610

Enc. Submitted documents

c: Requestor  
(w/o enclosures)