



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 28, 2011

Ms. Monica Hernandez  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283

OR2011-05813

Dear Ms. Hernandez:

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# 415868 (COSA# 11-0236).

The City of San Antonio (the "city") received a request for four categories of information pertaining to victims under the age of 18 in homicide-related deaths in the city and in Bexar County during a specified time period.<sup>1</sup> You state you will release some of the requested information. You claim portions of the submitted information are 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 representative sample of information.<sup>2</sup>

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses common-law privacy, which protects

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<sup>1</sup>You state the city sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request).

<sup>2</sup>We assume 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 those records contain substantially different types of information than that submitted to this office.

information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *See id.* at 681-82. We understand you to argue the submitted information should be withheld in its entirety under section 552.101 in conjunction with common-law privacy. We note because privacy is a personal right that lapses at death, the common-law right to privacy does not encompass information that relates only to a deceased individual. Accordingly, information pertaining solely to a deceased individual may not be withheld on common-law privacy grounds. *See Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); *see also* Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). Because the submitted information pertains to deceased individuals, no portion of it may be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.115 of the Government Code excepts from disclosure death records held either by the bureau of vital statistics of the Texas Department of Health or a local registration official. 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 or a local registration official is excepted from [required public 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;

(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)(2)-(4). You state the submitted information constitutes records maintained by the San Antonio Metropolitan Health District (the "district"). You explain the

district is the local registration office of the city for birth and death record information. Death record information is not available to the public until the 25th anniversary of the date of death shown on the certificate. *Id.* § 552.115(a)(2). The only information from death records filed within the previous five years that is available to the public is information contained in a summary death index compiled by the district. *See id.* § 552.115(a)(4). Section 181.23 of title 25 of the Texas Administrative Code provides, in part:

(c) Death indexes.

...

(3) A summary death 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.

*See* 25 T.A.C. § 181.23(c)(3). Thus, section 181.23 prescribes the format of death indexes required to be compiled and maintained by the district. Although you state the district does not maintain a summary death index, you explain the district does maintain responsive demographics that can be extracted from the vital statistics database. In this instance, the requestor seeks the name, sex, age or date of birth, and race or ethnicity of certain individuals. The summary death index as prescribed by the above regulations contains the registrant's surname, given name or initials, and sex of the registrant. Summary death indexes are declared in subsection (a) of section 552.115 of the Government Code to be "public information and available to the public." Gov't Code § 552.115(a). Thus, the surname, given name, and sex of the registrant in the submitted information, which you have marked, are not excepted from required public disclosure under section 552.115 and must be released to the requestor.

However, we note the submitted information also contains more information than would be contained within the summary death index as prescribed by section 181.23. We note the summary death index includes the date of death, but does not include the age or date of birth or the race or ethnicity as sought by the requestor. *See* 25 T.A.C. § 181.23(c)(3). We believe the purpose behind section 552.115 of the Government Code, that of preventing fraud, is one of the purposes behind the above-quoted administrative rules that dictate certain categories of information that comprise each type of death index. Because the remaining categories of information in the submitted information are not public information under section 552.115, and the above-referenced administrative rules do not provide for the release of this information, we believe this information, derived from or related to a source death record, is made confidential under section 552.101 of the Government Code in conjunction with the

above-referenced administrative rules. Therefore, we find the city must withhold the remaining information on this basis.<sup>3</sup>

In summary, the surname, given name, and sex of the registrant in the submitted information, which you have marked, are not excepted from required public disclosure under section 552.115 and must be released to the requestor. The remaining information must be withheld under section 552.101 of the Government Code in conjunction with section 181.23 of title 25 of the Texas Administrative Code.

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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/tf

Ref: ID# 415868

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>As our ruling is dispositive, we need not address the remaining argument against disclosure of the submitted information.