



Attorney General

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Phoenix, Arizona 85007

Robert E. Corbin

July 30, 1986

The Honorable Jim Skelly
Arizona State Representative
State Capitol - House Wing
Phoenix, Arizona 85007

Re: I86-083 (R86-035)

Dear Representative Skelly:

You have asked whether the Department of Health Services ("DHS") is authorized to release to you records of the Department that disclose the number of abortions performed by a particular clinic.

We have determined that the information that you seek from the Department of Health Services is a vital record the release of which is governed by statutes and rules applicable to access to vital records.

A.R.S. § 36-301(9) defines vital records as "certificates, records, or reports of birth, death, fetal death, adoption, and amendments and attachments thereto." "Fetal death" is defined in § 36-301(2) as "death prior to the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy"

The implementation and administration of the vital statistics system of the State for the most part is committed to the Director of DHS as the State Registrar of Vital Statistics in which capacity A.R.S. § 36-303(3) requires him to promulgate rules "necessary for the efficient implementation and administration of a state-wide system of vital statistics and of all activities related thereto" as authorized by statute.

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In connection with the reporting of fetal deaths by abortion the Director of DHS has provided in A.C.R.R. R9-19-302:

A. A fetal death certificate is required for each fetal death occurring in this State after a gestation period of 20 completed weeks. If the gestation period is uncertain, or unknown, a certificate should be filed if the fetus weighs 350 grams or more. Any abortifacient act resulting in a fetal death, when the length of gestation is more than 20 weeks, shall also require the filing of a fetal death certificate. The certificate shall be registered in accordance with A.R.S. § 36-329.

B. For the purpose of these Regulations, an abortifacient act means a procedure or procedures by which an abortion is induced and completed. Since these can be medical or surgical, the term "abortifacient act" refers to either or both.

C. A termination of pregnancy report shall be prepared by the attending physician and filed directly with the State Registrar reporting any fetal death due to an abortifacient act for which a fetal death certificate is not required. The termination of pregnancy report shall be prepared on forms prescribed and furnished by the State Registrar.

D. Each hospital and outpatient treatment center in the State shall submit a monthly report to the State Registrar showing:

1. All registrable fetal deaths occurring in that facility in accordance with R9-19-201;

2. The total number of abortifacient acts performed in that facility. If no registrable fetal deaths or abortifacient acts occurred in the facility during the month, no report need be sent.

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The information that you seek is contained in the vital records filed with DHS pursuant to R9-19-302(D)(2).

The Director of DHS has been given broad discretion by the legislature to promulgate rules to protect confidential information. A.R.S. § 36-107 provides:

The director shall promulgate such rules and regulations as are required by state law or federal law or regulation to protect confidential information. No names or other information of any applicant, claimant, recipient or employer shall be made available for any political, commercial or other unofficial purpose.

Specifically referring to vital records, the legislature has provided as follows:

A. To protect the integrity of vital records, to insure their proper use and to insure the efficient and proper administration of the vital statistics system, it shall be unlawful for any person to permit inspection of any vital record in his custody, to disclose information contained therein, or to transcribe or issue a reproduction of all or part of any such record except as authorized by this chapter and the regulations promulgated hereunder.

B. Subject to conditions prescribed by the director of the department of health services, data contained on records, including medical information, may be used for research and statistical purposes. The director of the department of health services may provide by regulation for other and further disclosure of data contained in vital records for statistical and research purposes.

A.R.S. § 36-340 (emphasis added).

A.R.S. § 36-341(E) provides that various governmental agencies may be furnished copies or data for statistical or

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research purposes upon terms and conditions provided by the Director of DHS:

Federal, state, local, and such other agencies as the director of the department of health services may designate may, upon request, be furnished copies or data for statistical or research purposes upon such terms and conditions including fees and other costs as the director of the department of health services may provide.

[Emphasis added.]

By rule, the Director of DHS has provided who may obtain vital records and how eligible persons may obtain vital records. Pertinent to your inquiry is A.C.R.R. R9-19-410 which deals with the release of information from vital records to those not having a specifically identifiable legal or vital interest in a particular vital record. R9-19-410(A) provides that vital records may be released to government agencies, hospitals, foundations, schools, social agencies and similar organizations or individuals for statistical or research purposes.

If you seek the information about which you have inquired for statistical or research purposes, then as a governmental individual you are eligible under the rule to receive the vital record or data therefrom.

R9-19-410(A) also provides:

All such requests shall clearly identify the requesting agency or individual, state the number of copies needed, explain the objective of the study and contain a statement over the applicant's signature expressing familiarity with the confidentiality aspects of the records and his willingness to abide by the restrictions.

With respect to the confidentiality of vital records and data therefrom obtained under R9-19-410, R9-19-410(B) provides:

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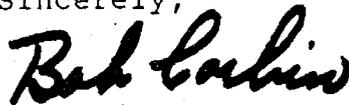
B. In no case shall the researcher either in the published results of his study or in communication with others:

1. Identify any individual on a certificate by name or address.
2. Contact persons named on a certificate without prior permission from the State Registrar.
3. Deliver the information to other persons not connected with the study.
4. Use the information in any way so as to violate the privacy of any individual named on a certificate or cause embarrassment to him or his family.

These regulations, which prohibit release of any of the information contained on a vital record to the general public or to anyone who is not connected with the study, are within the scope of the broad discretionary rule-making authority granted to the director of DHS by the legislature.

When you have complied with the requirements of R9-19-410(A), the Director of DHS will be authorized to release to you the vital record information that you seek.

Sincerely,



BOB CORBIN
Attorney General

BC:FWS:lfc