

MAINE STATE LEGISLATURE

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JAMES E. TIERNEY
ATTORNEY GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
STATE HOUSE STATION 6
AUGUSTA, MAINE 04333

January 19, 1989

Rollin Ives, Commissioner
Department of Human Services
State House Station #11
Augusta, Maine 04333

Dear Commissioner Ives:

This responds to your request for a clarification of the Opinion of this Department of November 21, 1977 concerning public access to vital records. In particular, you have asked whether the conclusion of that Opinion, that all vital records except those of illegitimate births must be open to public inspection, applies to information relating to the cause of death contained in death certificates which are in the possession of state or local custodians. For the reasons which follow, it is the Opinion of this Department that, like information relating to illegitimate births, cause of death information is not public.

The broad question addressed in this Department's 1977 Opinion, a copy of which is attached, was the relationship between the Maine Freedom of Access Law, 1 M.R.S.A. §§ 401 - 410 (1979 & Supp. 1988), and the specific provisions of 22 M.R.S.A. § 2706 (1980) regarding the disclosure of vital records. As the 1977 Opinion correctly points out, all documents in the possession of governmental entities in Maine are, under the express terms of the Freedom of Access Law, open to public inspection. 1 M.R.S.A. § 408 (1979). The Law, however, does make certain exceptions to this broad rule, the most important of which for present purposes is an exception for "records that have been designated confidential by statute." 1 M.R.S.A. § 402(3)(A) (1979). 22 M.R.S.A. § 2706 is such a statute, which, as the 1977 Opinion recognized, among other things, renders information relating to illegitimate births confidential. 22 M.R.S.A. § 2706(1).

The problem which your inquiry poses derives from the conclusion of the 1977 Opinion that, except for records of illegitimate births, all other vital records are open to public inspection. While it is not clear to what specific kind of record that Opinion was directed, it is clear that it did not focus upon the question of public accessibility to cause of death information. That type of information, like information relating to illegitimate births, is the subject of an express provision of Section 2706:

It shall be unlawful for any employee of the State or of any municipality in the State to disclose data contained in such records [of birth, marriage and death], except as authorized in this section and except that a clerk of a municipality may cause to be printed in the annual town report the deaths reported within the year covered by the said report, by date of death, name, age and location by city or town where death occurred. All other details of death shall not be available to the general public.
22 M.R.S.A. § 2706(4) (emphasis added).

The last sentence of Section 2706(4) was added in 1973. P.L. 1973, ch. 127.^{1/} While the legislative history of the amendment is silent as to its relation to the Freedom of Access Law, first enacted in 1959, P.L. 1959, ch. 219, it is quite clear that the Legislature intended that the details of death, other than the name and age of the deceased and the date and location of death, be unavailable to the public. Appeal of Davis, 369 A.2d 628 (Me. 1977) (plain meaning of legislative enactments shall be given effect). Thus, cause of death information contained in death records must be regarded as confidential and not open to public inspection under the Freedom of Access Law.

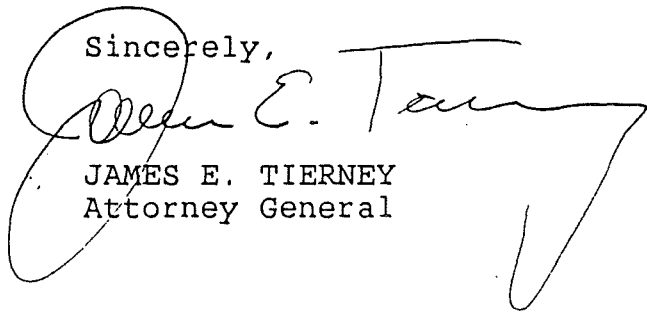
This conclusion is confirmed by more recent action of the Maine Legislature. In 1986, the Legislature amended the Medical Examiner Act to permit information concerning, among other things, the ". . . cause, manner and circumstances of death . . ." to be released to the public, "[n]otwithstanding section 2706, subsection 4, . . ." P.L. 1985, ch. 611, § 2, amending 22 M.R.S.A. § 2842(3). See L.D. 1218, Statement of Fact, 2nd paragraph (112th Legis. 1985) (the purpose of the amendment is to detail "those portions of the death certificate that the medical examiner is responsible for among the entries required on the death certificate," and to allow, "the Office of the Chief Medical Examiner to release that information to

^{1/} Section 2706 itself was enacted in 1957. P.L. 1957, ch. 298, § 7.

the public.") This provision, expressly exempting itself from the operation of Section 2706(4), would have been superfluous if all of the information on the death certificate, including the cause of death, were already available to the public.^{2/} The Legislature thus appears to have fully understood, as recently as 1986, that it had designated cause of death information to be confidential.

I hope the foregoing answers your question. If your Department should have any other questions concerning the public accessibility of specific classes of vital records, please do not hesitate to reinquire. As indicated above, the general rule set forth in this Department's 1977 Opinion is correct: all such records are public unless specifically made confidential by independent statute. As indicated above, the Legislature has clearly rendered information relating to illegitimate births and causes of death not available to the public. This Opinion offers no view on any other specific class of vital records.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read "James E. Tierney". The signature is written over the typed name and title.

JAMES E. TIERNEY
Attorney General

JET/ec

^{2/} A 1987 amendment to Section 2842(3), authorizing the Attorney General to direct the Medical Examiner to withhold, among other things, cause of death information, left the relevant language intact. P.L. 1987, ch.329, § 1.