



Department of Health and Mental Hygiene

Board of Health

Notice of Adoption of Amendment to Article 207 of the New York City Health Code

In compliance with section 1043(b) of the New York City Charter (“the Charter”) and pursuant to the authority granted to the Board of Health by section 558 of said Charter, a notice of intention (“NOI”) to amend Article 207 of the New York City Health Code (“the Health Code”) was published in the New York City Record on September 20, 2017, and a public hearing was held on October 24, 2017. At the hearing, 31 people testified, 18 of whom also submitted written comments. In all, 5,028 written comments were received, 3,884 of which were signatures to a petition and many of these signatories also submitted their own written comments. No changes have been made to the proposed amendment to Article 207 based on the comments received, as discussed below. The Department is, however, separately proposing to the Board, in response to comments received, amendments to the Health Code to expand the categories of qualified applicants who may access birth and death records before the records are transferred to the Department of Records and Information Services (“DORIS”) and become public. At its meeting on March 13, 2018, the Board of Health adopted the following resolution.

Statement of Basis and Purpose

Introduction

Birth and death records are protected from access by the general public because they contain individually identifiable information, which is considered private. A birth certificate contains the first and last name of the person whose birth is being registered, date of birth, sex, home address, and mother’s maiden name. In addition to information about the decedent, a death certificate contains the first and last name of parents, surviving spouse, and individual reporting the death. This is individually identifiable information within the meaning of Health Code section 3.25 that, as the notes accompanying that section’s adoption state, “will be treated with the utmost confidentiality.” Yet, birth and death records are also important historical documents that at some point should be available to historians and families researching their ancestries. For this reason, Administrative Code section 17-170(b) charges the Board with deciding when the original records of births and deaths filed with the Department, and the indexes to such records, should become public records and transferred to the Department of Records and Information Services (“DORIS”).

This Health Code amendment establishes fixed schedules for making birth and death records public and transferring them to DORIS. Specifically:

- a birth record become a public record on January 31st of the year following 125 years after the date of birth, and
- a death record becomes a public record on January 31st of the year following 75 years after the date of death.

The Department believes that these schedules balance the need to protect the personal information of people who may be alive, especially as it relates to the problem of identity theft as well as other privacy issues, with the public’s right to access historically important records, including the specific interests of families, genealogists and other researchers. The schedules also avoid the transfer of records to DORIS that are, in the Department’s experience, still subject to amendment by the individual to whom the record pertains, the Office of Chief Medical Examiner, the courts, or family members.

Background

Birth and death records

In New York City, as in most vital records jurisdictions nationwide, the certificate of birth collects a wealth of information, pertaining both to the person registered on the record and their family members. On the birth record, this includes: the registrant’s date of birth, location of birth, and sex; the mother’s and father’s names prior to first marriage, places of birth, and dates of birth; as well as the number of children delivered at the time of birth, and a home address. Death certificates, in addition to presenting date and cause of death, include date of birth, location of death, names of parents, as well as information on the surviving spouse and the living person known as the informant, including their name, relationship to decedent and mailing address. This type of personal identifying information (“PII”) is protected in other contexts under multiple federal,¹ State,² and local³ privacy laws.

Necessary and appropriate use of birth and death certificates and information

Information included in birth records and birth certifications is required by multiple governmental agencies and private entities to receive a benefit or service, or to support the

¹ See, e.g., the Privacy Act of 1974 as amended (5 U.S.C. § 552a); the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191, 110 Stat. 1936 (1996)) Privacy Rule (45 C.F.R. Part 160 and Subparts A and E of Part 164); the Driver’s Privacy Protect Act (18 U.S.C. § 2721 *et seq.*); and the Identity Theft and Assumption Deterrence Act of 1998 (18 U.S.C. § 1028).

² See, e.g., the Personal Privacy Protection Law (NYS Public Officers Law Article 6A) and 10 NYCRR §§ 35.2 and 35.4 making birth and death records maintained by NYS agencies confidential except in limited circumstances. Also see NYS Public Officers Law §§ 87(2)(b) and 89(2)(b), which protect date of birth information from public release.

³ See, e.g., NYC Charter § 2604(b)(4) prohibiting City employees and officials from disclosing any confidential information obtained as a result of his/her official duties and NYC Administrative Code Title 10, Chapter 5 concerning disclosures of security breaches.

issuance of other documents often used for identity purposes, such as obtaining a driver's license. Birth records are considered "foundational documents," meaning they are often the first document obtained that enables the holder to then obtain other important documents. For example, the information contained in a birth certificate can also be used in the process of getting a U.S. passport or Social Security card and accessing public benefits such as Medicaid.

Death records and the PII included in them are used to open or close decedents' bank accounts, notify federal agencies such as the Internal Revenue Service and the Social Security Administration of a death, and to start the probate process in court. They are also needed to access payments such as life insurance and survivor's benefits in pensions and other programs.

Amendment and correction of birth and death records/issuance of new birth certificates

Birth and death certificates are considered "living" documents in that their content can be changed in certain circumstances. Pursuant to Article 207 of the Health Code, the content of a birth or death certificate may be amended or corrected, or a new birth certificate issued, to correct errors made in the originals or to reflect changes in circumstances, such as adoption or change in gender. These are common requests from Vital Records customers. During the five-year period from 2012 to 2016, the Department processed 1,030 birth record corrections and amendments for individuals born in 1940 and earlier, including 24 delayed registrations of birth and amendments for individuals aged 90 and above. During the same five year period, the Department also processed 257 death record corrections and amendments for individuals who died in 1970 and earlier. These are legal changes to records requested by living New Yorkers or their survivors. Pursuant to Health Code § 207.01(a), the Commissioner of Health or his or her designee may make these changes to the actual records.

When such changes are made to birth certificates, Administrative Code section 17-167(c) requires the substitution of the new birth record for the one on file. If a record has been transferred to DORIS and made public, the ability for the Department to substitute a new record for it is substantially compromised. For these reasons, it is important that the Department not make birth and death records publically available while they still may be subject to corrections and amendments. The Board declines to issue "For Information Only" or similar uncertified documents related to birth and death records, as many comments suggested. The Board believes that there is a similar risk of misuse of the information on copies of birth and death records, whether the records are certified or not.

Privacy concerns

Privacy concerns also attest to the importance of maintaining the confidentiality of birth and death certificate PII during a person's lifetime and for an appropriate period after. For example, a teenage mother named on the death certificate of an infant may still be alive 75 years

after her infant had died or the birth certificate of a transgender person may reveal information that person may prefer to keep private, especially if the certificate has not been amended.

New Yorkers are living longer

New Yorkers are living longer than ever before. The 2010 US Census showed that almost a half-million New York City residents were over the age of 75.

Age	Total
75 – 79	178,019
80 – 84	142,272
85 – 89	90,375
90 – 94	37,270
95 – 99	11,665
100+	2,096
Total	461,697

Another half million were between the ages of 65 and 74.⁴ Since 2010, the American Community Survey estimates that the total number of New York City residents age 75 and over had increased to more than 492,000, with more than 1.25 million over the age of 65.⁵ In 2005, 585 New Yorkers died between the ages of 100 and 114. In 2014, that number rose to 806 deaths between the ages of 100 and 114, a 38% increase, and in 2015 the number rose to 901. Birth and death data should be protected to adequately reflect these trends to guard against identity theft and fraud.

Fraudulent and inappropriate use of birth and death certificates and information

The PII found on birth and death certificates has the potential to be used in various fraudulent ways, including identity theft. Identity theft involves appropriating PII and, in the name of that person, incurring debt, taking money from financial accounts, opening new accounts, accessing medical information or services, or receiving a tax refund, among other things.⁶ Indeed, in addition to “foundational documents,” birth certificates are also referred to as

⁴ <http://www1.nyc.gov/site/planning/data-maps/nyc-population/census-2010.page>

⁵ <http://www1.nyc.gov/site/planning/data-maps/nyc-population/american-community-survey.page>.

⁶ See, e.g., NYS Penal Law Article 190; Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice, “Identity Theft,” accessible online at <https://www.bjs.gov/index.cfm?ty=tp&tid=42>; U.S. Federal Trade Commission Consumer Sentinel Data Book for January – December 2016 (“FTC 2016 Data Book”), accessible online at https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-january-december-2016/csn_cy-2016_data_book.pdf.

“breeder documents” because they can be used to obtain other valid forms of identity.⁷ Information from death certificates can be used in a similar manner, sometimes referred to as “ghosting.”⁸

Health Code Amendment

The Board is amending the Health Code to establish a fixed schedule for making birth and death certificates public and transferring them to DORIS. A birth record will become a public record on January 31st of the year following 125 years after the date of birth, and a death record will become public on January 31st of the year following 75 years after death. This schedule balances the need to protect the personal information of people who may be alive with the public’s right to access historically important records, including the specific interests of families, genealogists and other researchers. The schedule also precludes the transfer of records to DORIS that are still subject to amendment by the individual to whom the record pertains, the Office of Chief Medical Examiner, the courts, or family members. This schedule was supported in comments submitted by both the New York State Department of Health and the National Association for Public Health Statistics and Information Systems (NAPHSIS), the national nonprofit membership organization representing the 57 vital records and public health statistics offices in the United States.

The Board recognizes there is a keen interest in accessing birth and death records for the sake of tracing genealogy and family health issues, as evidenced by the many comments received on the topic. The Board will therefore consider an amendment to the Health Code to allow direct descendants and other close relatives to access birth and death records before they become public.

Statutory Authority

Pursuant to section 556(c) of the Charter and section 17-166 of the Administrative Code, the Department is responsible for supervising and controlling the registration of births and deaths that occur in the City of New York. Section 558(c) of the Charter requires the Board to include in the Health Code provisions related to maintaining a registry of births and deaths, as well as provisions related to changes or alterations of any birth or death certificate upon proof satisfactory to the Commissioner of Health and the manner in which these certificates may be issued and otherwise examined. Administrative Code section 17-169 and Health Code sections 3.25 and 207.11 make birth and death records confidential and restrict access to these records beyond certain classes of specified people. Section 17-170(b) of the Administrative Code

⁷ *Birth Certificate Fraud*, U.S. Department of Health & Human Services, Office of Inspector General (OEI-07-99-00570 September 2000).

⁸ See, e.g., NYS Department of State, Division of Consumer Protection, “After Death” accessible online at <https://www.dos.ny.gov/consumerprotection/scams/afterdeath.html>.

authorizes the Board to determine when birth and death records are transferred to DORIS. Section 558(b) of the Charter specifically authorizes the Board to add to, alter, and amend the Health Code.

The amendment is as follows:

RESOLVED, that a new section 207.21 of Article 207 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York, be adopted, to be printed together with explanatory notes, to read as follows:

§ 207.21. Birth and death records to be public records; transfer to the department of records and information services

Notwithstanding any other provision of this Code, a birth record in the Department's possession and control becomes a public record on January 31st of the year following 125 years after the date of birth and a death record in the Department's possession and control becomes a public record on January 31st of the year following 75 years after the date of death. The Department shall transfer to the City's department of records and information services all public birth records, death records, and index books.

NOTE: This provision was adopted on March 13, 2018, to establish fixed schedules for making birth and death records accessible to the public. Prior to this adoption, a Board of Health vote was required for every transfer of documents to the City's department of records and information services.