



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

December 11, 2002

Mr. James M. Frazier, III  
Assistant General Counsel  
Texas Department of Criminal Justice  
P. O. Box 4004  
Huntsville, Texas 77342

OR2002-7050

Dear Mr. Frazier:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 173606.

The Texas Department of Criminal Justice (the "department") received a written request for "a complete copy of any investigation undertaken of" the custodial death of a named inmate. You state that some of the responsive information will be released to the requestor. You contend, however, that the remaining information coming within the scope of the request is excepted from required disclosure pursuant to sections 552.101, 552.108, 552.117, and 552.134 of the Government Code.

We note at the outset that among the records you submitted to this office as being responsive to the records request is a "Custodial Death Report." Article 49.18(b) of the Code of Criminal Procedure requires that law enforcement agencies complete custodial death reports and file those reports with the Office of the Attorney General, who "shall make the report, with the exception of any portion of the report that the attorney general determines is privileged, available to any interested party." In Open Records Decision No. 521 (1989), this office held that under article 49.18(b), in conjunction with a directive issued by the Office of the Attorney General, Section I of custodial death reports filed with this office is public information. All remaining portions of the custodial death report, *i.e.*, Sections II through V, including all attachments, are deemed privileged under article 49.18(b) and must be withheld from the public. *Id. But see id.* at 7 (although compilation of records attached as Section V are confidential, specifically requested records maintained as part of ordinary responsibilities not made confidential under article 49.18(b)).

With regard to the remaining submitted records, we now address the applicability of section 552.134(a) of the Government Code, which provides:

Except as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the Texas Department of Criminal Justice is excepted from [required public disclosure] if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Section 552.029 of the Government Code provides:

Notwithstanding Section 508.313 or [552.134], the following information about an inmate who is confined in a facility operated by or under a contract with the Texas Department of Criminal Justice is subject to required disclosure under Section 552.021:

....

*(8) basic information regarding the death of an inmate in custody, an incident involving the use of force, or an alleged crime involving the inmate.*

Gov't Code § 552.029(8) (emphasis added). Thus, the legislature explicitly made section 552.134 subject to section 552.029. Pursuant to section 552.029(8), "basic information" regarding the death of an inmate is subject to required disclosure. The basic information that is subject to disclosure under section 552.029(8) includes the time and place of the incident, the names of inmates and of department employees who were involved, a brief narrative of the incident, a brief description of any injuries sustained by anyone involved, and information regarding any criminal charges or disciplinary actions that were filed as a result of the incident.

In this instance, the submitted records not made a part of the custodial death report clearly come within the purview of section 552.029(8). Accordingly, the department must release the basic information pertaining to the inmate's death pursuant to section 552.029 of the Government Code. However, the department must withhold all remaining submitted information pursuant to section 552.134 of the Government Code, except as discussed above.

In summary, Section I of the "Custodial Death Report" must be released to the requestor, but the remaining portions of that report must be withheld pursuant to article 49.18(b) of the Code of Criminal Procedure. Except for basic information regarding the custodial death, which must be released pursuant to section 552.029 of the Government Code, the remaining submitted information must be withheld from the public pursuant to section 552.134 of the Government Code.<sup>1</sup>

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<sup>1</sup>Because we resolve your request under sections 552.101 and 552.134, we need not address the applicability of the other exceptions you raised.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

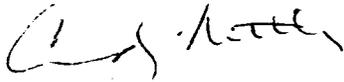
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy M. Nettles  
Assistant Attorney General  
Open Records Division

CMN/RWP/lmt

Ref: ID# 173606

Enc: Submitted documents

c: Mr. Juan C. Hernandez  
Attorney at Law  
4849 Greenville Avenue, Suite 1670  
Dallas, Texas 75206  
(w/o enclosures)