ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 20, 2003

Ms. Enid A. Wade
Naman Howell Smith & Lee
P.O. Box 1470
Waco, Texas 76703

OR2003-7479

Dear Ms. Wade:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your requests were assigned ID# 192171.

The Bell County Jail (the "county jail"), which you represent, received a request for all information pertaining to the death of the requestor's son. The county jail has released most of the requested information but claims sections II through V and the attachments to the custodial death report are excepted from required public disclosure by section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the documents at issue.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Article 49.18(b) provides that the "attorney general shall make the [custodial death] report, with the exception of any portion of the report that the attorney general determines is privileged, available to any interested person." The attorney general determined that "Part I of the form will be available to the public and Parts II to V will be classified as privileged." *See* Open Records Decision No. 521 at 5 (1989). Thus, pursuant to article 49.18 of the Code of Criminal Procedure, you must withhold sections II through V of the custodial death report. *See* Open Records Decision No. 521 (1989). Similarly, the documents compiled and attached to the custodial death report as attachments must be withheld. *Id.* at 7.

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).

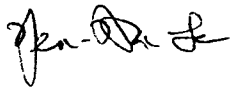
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 limits. 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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 192171

Enc. Submitted documents

c: Lisa & D.L. Parris
c/o Naman Howell Smith & Lee
P.O. Box 1470
Waco, Texas 76703
(w/o enclosures)