



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 3, 2006

Ms. Leslie R. Sweet
Legal Advisor
Dallas County Sheriff's Department
133 North Industrial Boulevard, LB 31
Dallas, Texas 75207-4313

OR2006-04549

Dear Ms. Sweet:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 247994.

The Dallas County Sheriff's Department (the "sheriff") received a request for the documents concerning the custodial death of a named individual. You state that you have released a portion of the requested information. You claim that the remaining requested information is exempted from disclosure under section 552.111 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note, and you acknowledge, that the submitted information contains a custodial death report. In 2003, the Office of the Attorney General (the "OAG") revised the format of a custodial death report. Previously, the report consisted of five sections. In Open Records Decision No. 521 at 5 (1989), we concluded that under article 49.18(b) of the Code of Criminal Procedure in conjunction with a directive issued by the OAG, section one of a custodial death report filed with this office was public information and must be released, but sections two through five of the report, as well as attachments to the report, were confidential. *See* Crim. Proc. Code art. 49.18(b) (attorney general shall make report, with exception of any portion of report that attorney general determines is privileged, available to any interested person). A custodial death report now consists of two pages and an attached summary of how the death occurred. The OAG has determined that the two-page report and summary must be released to the public; however, any other documents submitted with the

revised report are confidential under article 49.18 of the Code of Criminal Procedure. *See also* Open Records Decision No. 623 at 3 (1994) (exceptions to public disclosure under Act generally not applicable to information that another statute expressly makes public). Therefore, the sheriff must release the submitted custodial death report and the summary of how the death occurred under article 49.18 of the Code of Criminal Procedure.

You argue that the remaining information may be withheld from disclosure under section 552.111 of the Government Code. Section 552.111 excepts from disclosure “an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.” Gov’t Code § 552.111. In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the deliberative or policymaking processes of the governmental body. Open Records Decision No. 615 at 5-6.

An agency’s policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. *Id.* Additionally, section 552.111 does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *See Arlington Indep. Sch. Dist. v. Texas Atty. Gen.*, 37 S.W.3d 152, 160 (Tex. App.—Austin 2001, no writ); Open Records Decision No. 615 at 4-5.

The sheriff has failed to explain how the remainder of the submitted information constitutes internal communications of the sheriff reflecting the deliberative or policymaking processes of the sheriff. As such, none of the remaining information may be withheld on this basis.

In summary, the sheriff must release the submitted custodial death report and the summary of how the death occurred under article 49.18 of the Code of Criminal Procedure. As you raise no further exceptions against disclosure, the remaining submitted information must also be released.

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).

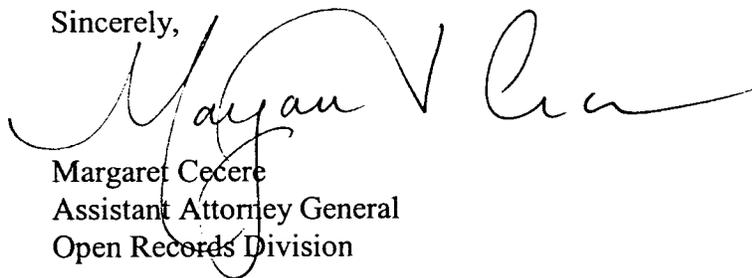
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Dep't of Pub. 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 Office of the Attorney General 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. 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,

A handwritten signature in black ink, appearing to read "Margaret Cecere", written over a printed name and title.

Margaret Cecere
Assistant Attorney General
Open Records Division

MC/sdk

Ref: ID# 247994

Enc. Submitted documents

c: Ms. Debra Dorman
Paralegal
Bellinger & DeWolf, LLP
10,000 North Central Expressway, Suite 900
Dallas, Texas 75231
(w/o enclosures)