



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 7, 2007

Mr. John C. West
General Counsel
Office of Inspector General
Texas Department of Criminal Justice
P.O. Box 13084
Austin, Texas 78711

OR2007-02616

Dear Mr. West:

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#273398.

The Texas Department of Criminal Justice's Office of Inspector General (the "OIG") received a request for information relating to the death of a named inmate, the number of inmates that have died at the specified prison unit within the last three years, and for specific information regarding the death of the requestor's husband. You state that basic information in the responsive information and the custodial death report of the deceased inmate will be released to the requestor with redactions pursuant to the previous determination issued by this office in Open Records Ruling 2005-01067 (2005).¹ You also state that the social security numbers contained in the responsive information will be redacted pursuant to

¹Open Records Letter No. 2005-01067 (2005) serves as a previous determination that the present and former home addresses, telephone numbers, social security numbers, and family member information of current or former employees of the Texas Department of Criminal Justice (the "department"), regardless of whether the current or former employee complies with section 552.1175 of the Government Code, are excepted from disclosure under section 552.117(a)(3) of the Government Code.

section 552.147 of the Government Code.² You claim that the remainder of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you have only submitted information regarding the death of the named inmate *for our review*. To the extent any additional responsive information existed on the date the department received this request, we assume it has been released.³ If not, you must do so at this time. *See Gov't Code § 552.006, .301, .302; see Open Records Decision No. 664 (2000)* (noting that if the governmental body concludes that no exceptions apply to requested information, it must release the information as soon as possible).

Section 552.134 of the Government Code relates to inmates of the Texas Department of Criminal Justice (the "department") and provides in relevant part:

- (a) 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.

Gov't Code § 552.134(a). 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.

² We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release *without the necessity* of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

³ We note that a governmental body is not required to answer factual questions, conduct legal research, or create new information in responding to a request. *See Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990)*. However, a governmental body must make a good faith effort to relate a request to information held by the governmental body. *See Open Records Decision No. 561 at 8 (1990)*.

Id. § 552.029(8). The information submitted by the OIG concerns an inmate who was confined in a facility operated by the department. Section 552.134 is explicitly made subject to section 552.029 of the Government Code. Under section 552.029, basic information regarding the death of an inmate in custody, an alleged crime involving an inmate, and an incident involving the use of force is subject to required disclosure. Basic information includes the time and place of the incident, names of inmates and department officials directly involved, a brief narrative of the incident, a brief description of any injuries sustained, and information regarding criminal charges or disciplinary actions filed as a result of the incident. The information at issue relates to the investigation of the death of an inmate in custody. Accordingly, with the exception of basic information that must be released pursuant to section 552.029(8), the OIG must withhold the submitted information under section 552.134 of the Government Code. As our ruling is dispositive, we need not address your other arguments against disclosure.⁴

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

⁴The information that is subject to section 552.029(8) corresponds to the basic front-page information that is made public under section 552.108(c). See Gov't Code § 552.108(c); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 186-188 (Tex. Civ. App.—Houston [14th Dist.] 1975), writ ref'd n.r.e., 536 S.W.2d 559 (Tex. 1976) (per curiam); Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public in *Houston Chronicle*).

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,



Lori A. Cobos
Assistant Attorney General
Open Records Division

LC/eb

Ref: ID# 273398

Enc. Submitted documents

c: Ms. Deborah Tabaka Vick
948 Myrta Street
Kerrville, Texas 78028
(w/o enclosures)