



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 12, 2007

Ms. Lisa Villarreal
Assistant Attorney General
Assistant Public Information Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2007-04130

Dear Ms. Villarreal:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 276326.

The Office of the Attorney General (the "OAG") received a request for the custodial death reports from 1994 to 2006 of inmates in the Wichita County Jail. The OAG asserts most of the information is excepted from disclosure under section 552.101 of the Government Code. We have considered the OAG's arguments and have reviewed the submitted sample of information.¹

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) of the Code of Criminal Procedure provides that with the exception of any portion of the custodial death report that the OAG determines is privileged, the OAG shall make the report public. Code Crim. Proc. art. 49.18(b). In Open Records Decision No. 521 at 5 (1989), we concluded that under

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

article 49.18(b) and 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). In 2003, the OAG revised the format of a custodial death report. A 2003 custodial death report 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.

For the pre-2003 reports, the OAG has complied with Open Records Letter No. 2001-2947 (2001), which is a previous determination permitting the OAG to withhold portions of the custodial death reports pursuant to article 49.18(b) without requesting a decision from this office. As for the 2003 reports, the OAG states it has released the two-page reports and summaries and seeks to withhold the attachments to the custodial death reports that were submitted to the OAG under article 49.18(b). We agree the OAG must withhold the attachments pursuant to article 49.18(b).

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).

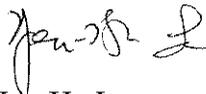
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 276326

Enc: Submitted documents

c: Mr. Joel P. Smyer
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(w/o enclosures)