



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

August 12, 2008

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

OR2008-11002

Dear Ms. Thomas:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 318756.

The Office of the Attorney General (the "OAG") received a request for the custodial death reports of twenty-two former Harris County jail inmates. The OAG states it has released some information and asserts the remainder is excepted from disclosure under section 552.101 of the Government Code. We have considered the OAG's claimed exception to disclosure 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." Gov't Code § 552.101. 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

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.

report that the OAG determines is privileged, the OAG shall make the report public. Code Crim. Proc. art. 49.18(b). The report was revised in May 2006 and the OAG has determined the report and attached summary of how the death occurred must be released to the public but that any other documents submitted with the revised report are confidential under article 49.18(b). The OAG states it has released the reports and attached summaries. Thus, pursuant to article 49.18(b), the OAG must withhold the attachments to the reports.

The OAG requests a previous determination with respect to custodial death reports filed after July 2003. We determine this letter ruling serves as a previous determination under section 552.301(a) that attachments to the reports requested from the OAG are excepted from public disclosure under section 552.101 in conjunction with article 49.18(b) of the Code of Criminal Procedure as provided in Open Records Decision No. 521 (1989). Thus, the OAG is not required to request a decision from this office in order to withhold this information under section 552.101 of the Government Code. *See* Open Records Decision No. 673 at 7-8 (2001).

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. 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 challenge 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 of 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. 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,

A handwritten signature in black ink, appearing to read "Yen-Ha Le". The signature is fluid and cursive, with the first name "Yen" and last name "Le" clearly distinguishable.

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 318756

Enc: Submitted documents

c: Ms. Peggy O'Hare
Houston Chronicle
P.O. Box 4260
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(w/o enclosures)