



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 22, 2009

Mr. James Mu  
Assistant General Counsel  
Office of the General Counsel  
Texas Department of Criminal Justice  
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Huntsville, Texas 77342-4004

Mr. John C. West  
General Counsel  
Office of the Inspector General  
Texas Department of Criminal Justice  
4616 Howard Lane, Suite 250  
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OR2009-10166

Dear Mr. Mu & Mr. John C. 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# 349856 (OIG ORR File #: OR-2009-00134).

The Texas Department of Criminal Justice (the "department") received a request for all information pertaining to the death of a named inmate. The department's Office of the General Counsel ("OGC") and Office of the Inspector General (the "OIG") have submitted separate briefs and separate documents that each seeks to withhold from disclosure. The OGC claims the information it has submitted is excepted from disclosure under sections 552.101 and 552.134 of the Government Code. The OIG states it will release some of the requested information to the requestor with redactions pursuant to the previous determination issued by this office in Open Records Letter No. 2005-01067 (2005).<sup>1</sup> The OIG also states it is withholding social security numbers under section 552.147(b) of the

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<sup>1</sup>Open Records Letter No. 2005-01067 serves as a previous determination that the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former employees of 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.

Government Code.<sup>2</sup> The OIG claims the information it has submitted is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.1175, and 552.134 of the Government Code. We have considered the exceptions claimed and reviewed the submitted information.

Initially, we note the submitted documents include a custodial death report. Article 49.18(b) of the Code of Criminal Procedure provides that the attorney general shall make the custodial death report available to any interested person, with the exception of any portion of the report that the attorney general determines is privileged. *See* Code Crim. Proc. art. 49.18(b). The report was revised in May 2006 and now consists of four pages and an attached summary of how the death occurred. The OAG has determined that the four-page report and summary must be released to the public but that any other documents submitted with the revised report are confidential under article 49.18(b). The OIG has submitted documentation reflecting that the four-page portion of the submitted custodial death report has been released to the requestor. Pursuant to article 49.18(b), the department also must release the summary of how the inmate's death occurred.

Next, we address section 552.134 of the Government Code. That exception encompasses information relating to inmates of the department and states that:

[e]xcept as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the [department] 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, however, that:

[n]otwithstanding . . . Section 552.134, the following information about an inmate who is confined in a facility operated by or under a contract with the [department] 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.

*Id.* § 552.029(8). Thus, the legislature explicitly made section 552.134 subject to section 552.029.

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<sup>2</sup>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.

Both the OGC and the OIG claim section 552.134 for the remaining information. We note that although the inmate to whom the remaining information pertains is deceased, section 552.134 is applicable to information that relates to the decedent as an inmate. We find that section 552.134 is generally applicable to the remaining information. We note, however, that the information in question is related to the death of an inmate in custody. Basic information about this incident is subject to disclosure under section 552.029(8). Basic information under section 552.029(8) includes the time and place of the incident, the names of inmates and of department employees who were involved, a brief narrative of the incident, a brief description of any injuries sustained by anyone involved, and information regarding any criminal charges or disciplinary actions that were filed as a result of the incident. With the exception of the basic information that must be released under section 552.029(8), the department must withhold the remaining information under section 552.134.<sup>3</sup>

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Christina Alvarado  
Assistant Attorney General  
Open Records Division

CA/rl/eeg

Ref: ID# 349856

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

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<sup>3</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure.