



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 31, 2010

Mr. John C. West
General Counsel
Texas Department of Criminal Justice
Office of the Inspector General
4616 West Howard Lane, Suite 250
Austin, Texas 78728

OR2010-13256

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# 392159 (OIG ORR File No. 2010-00141).

The Texas Department of Criminal Justice's (the "department") Office of the Inspector General (the "OIG") received a request for information pertaining to the death of a named inmate. You state that you have released some information to the requestor with certain addresses, telephone numbers, social security numbers, and personal family information withheld pursuant to sections 552.117 and 552.147(b) of the Government Code, as well as the previous determination issued by this office in Open Records Letter No. 2005-01067 (2005).¹ You claim that the submitted information in Exhibit C is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.1175, 552.130, 552.134, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted records 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 attorney general has determined that the four-page

¹We note 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. Further, section 552.147(b) of the Government Code authorizes a governmental body to redact the social security number of a living person from public release without the necessity of requesting a decision from this office under the Act.

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). In this instance, you have submitted a custodial death report. The OIG must release this report, which we have marked, pursuant to article 49.18(b). We note the exceptions to disclosure found in the Act do not generally apply to information that other statutes make public. See Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989).

You raise section 552.134 of the Government Code for the remainder of Exhibit C. Section 552.134 of the Government Code encompasses information relating to inmates of the department and states:

(a) Except 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:

Notwithstanding 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. You state the remainder of Exhibit C pertains to a department inmate and is therefore subject to section 552.134. 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. Upon review, we find section 552.134 is generally applicable to the remainder of Exhibit C. We note, however, that the information in question is related to the death of an inmate in custody. As you acknowledge, 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. Thus, with

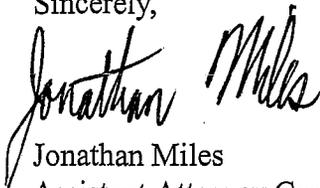
the exception of the basic information, which you state will be released, the OIG must withhold the remainder of Exhibit C under section 552.134.²

In summary, the marked custodial death report must be released pursuant to article 49.18(b). With the exception of basic information, which must be released, the OIG must withhold the remainder of Exhibit C under section 552.134 of the Government Code.

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, 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, toll free, at (888) 672-6787.

Sincerely,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/jb

Ref: ID# 392159

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling under section 552.134 of the Government Code is dispositive for the remaining information, we do not address your remaining arguments against disclosure, except to note that basic information may not generally be withheld under section 552.108. See Gov't Code § 552.108(c).