



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 26, 2012

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

OR2012-11765

Dear Mr. Mu:

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# 460400 (ORR 2012-00093).

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to a named deceased inmate. The department's Office of the General Counsel (the "OGC") and Office of the Inspector General (the "OIG") have submitted separate briefs, as well as separate responsive documents that each seeks to withhold from disclosure. The OGC states it has released or will release some of its responsive information, but claims the information it submitted is excepted from disclosure under sections 552.101 and 552.134 of the Government Code. The OIG states it will provide some of its responsive information to the requestor with information redacted pursuant to section 552.147(b) of the Government Code and the previous determination issued to the department in Open Records Letter No. 2005-01067 (2005).¹ The OIG claims the information it has submitted is excepted

¹Open Records Letter No. 2005-01067 authorizes the department to withhold the present and former home addresses and telephone numbers, social security numbers, and family member information of its current or former employees under section 552.117(a)(3) of the Government Code, regardless of whether the current or former employee complies with section 552.1175 of the Government Code, without the necessity of requesting a decision under the Act. See Open Records Decision No. 673 (2001) (listing elements of first type of previous determination under section 552.301(a) 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.

from disclosure under sections 552.101, 552.102, 552.108, 552.130, and 552.134 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

We note the information at issue includes a custodial death report. Article 49.18(b) of the Code of Criminal Procedure provides that with the exception of any portion of the custodial death report the Office of the Attorney General (“OAG”) determines is privileged, the OAG shall make the report public. *See* Crim. Proc. Code art. 49.18(b). The format of 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 the four-page report and summary must be released to the public but any other documents submitted with the revised report are confidential under article 49.18(b). Therefore, the department must release the custodial death report we have marked in the OIG’s submitted information pursuant to article 49.18(b) of the Code of Criminal Procedure.

The OGC and the OIG claim the remaining information is excepted under section 552.134(a) of the Government Code, which relates to inmates of the department and provides:

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 552.134 is explicitly made subject to section 552.029, which provides, in relevant part:

[n]otwithstanding [s]ection . . . 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). We find the remaining submitted information pertains to the deceased inmate; therefore, we conclude section 552.134(a) is generally applicable to this information. We note, however, some of the remaining submitted information pertains to alleged crimes involving the named inmate and the named inmate’s death in custody. Therefore, the OGC and OIG must release basic information about the alleged crimes and inmate’s death pursuant to section 552.029(8). 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. Therefore, with the exception of basic information, the department must withhold the remaining information pursuant to section 552.134(a) of the Government Code.²

In summary, the department must release the custodial death report we have marked in the OIG's submitted information pursuant to article 49.18(b) of the Code of Criminal Procedure. With the exception of basic information, the department must withhold the remaining information pursuant to section 552.134(a) 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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/bhf

Ref: ID# 460400

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling under section 552.134 of the Government Code is dispositive, we do not address the OGC's or OIG's remaining arguments against disclosure of this information, except to note that basic information under section 552.029(8) corresponds to basic front-page information under section 552.108(c) of the Government Code. See Gov't Code 552.108(c); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 186-88 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 at 3-4 (1976).