



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 9, 2012

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

OR2012-18084

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# 471724.

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to the last sentence served by a named inmate. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we must address the department's obligations under section 552.301 of the Government Code, which prescribes the procedural obligations that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires that a governmental body ask for a decision from this office and state which exceptions apply to the requested information by the tenth business day after receiving the request. *Id.* § 552.301(b). While you raised sections 552.101, 552.108, and 552.134 of the Government Code within the ten-business-day time period as required by subsection 552.301(b), you did not raise section 552.103 of the Government Code until after the ten-business-day deadline had passed. Thus, the department

failed to comply with the requirements mandated by subsection 552.301(b) as to its argument under section 552.103 of the Government Code. Generally, if a governmental body fails to timely raise an exception, that exception is waived. *See generally id.* § 552.302; Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Section 552.103 of the Government Code is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See Gov't Code* § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, in failing to timely raise section 552.103 for the requested information, the department has waived its argument under that section. However, we will consider your timely raised arguments against disclosure under sections 552.101, 552.108, and 552.134 of the Government Code for the submitted information.

Section 552.134(a) of the Government Code 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 submitted information pertains to the named inmate; therefore, we conclude section 552.134(a) is generally applicable to this information. We note, however, the submitted information pertains to the named inmate's death in custody. Therefore, the department must release basic information about the 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 submitted information pursuant to section 552.134(a) of the Government Code.¹

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,



Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/som

Ref: ID# 471724

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As our ruling under section 552.134 of the Government Code is dispositive, we do not address your remaining arguments against disclosure of this information, except to note 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).