



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 4, 2013

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

OR2013-09180

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# 488897 (OIG 2013-00055).

The Texas Department of Criminal Justice's Office of the Inspector General (the "department") received a request for information relating to the death of a named inmate. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.107, 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 some of the submitted information may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2013-00006 (2013). In that ruling, we concluded, except for basic information subject to section 552.029(8) of the Government Code, the department must withhold the submitted information under section 552.134 of the Government Code. We have no indication the law, facts, and circumstances on which Open Records Letter No. 2013-00006 was based have changed. Accordingly, with regard to the requested information that is identical to the information previously requested and ruled upon by this office in the prior ruling, we conclude the department must continue to rely on Open Records Letter No. 2013-00006 as a previous determination and withhold or release the previously ruled upon information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous

determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the submitted information is not encompassed by the previous ruling, we will consider your arguments against its release.

Next, we note the submitted information 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 submitted custodial death report pursuant to article 49.18(b) of the Code of Criminal Procedure.

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 deceased 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 remaining information pursuant to section 552.134(a) of the Government Code.<sup>1</sup>

In summary, to the extent the submitted information is identical to the information previously requested and ruled upon by this office, we conclude the department must rely on Open Records Letter No. 2013-00006 as a previous determination and withhold or release the identical information in accordance with that ruling. The department must release the submitted custodial death report 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](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,



Paige Lay  
Assistant Attorney General  
Open Records Division

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<sup>1</sup>As 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). Further, this ruling does not affect an individual's right of access to a deceased patient's medical records from the physician who provided treatment under the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. See Occ. Code §§ 159.004-.006; see also *Abbott v. Tex. State Bd. of Pharmacy*, 391 S.W.3d 253 (Tex. App.—Austin 2012, no pet.) (MPA does not provide patient general right of access to his or her medical records from governmental body responding to a request for information under the Public Information Act).

Ref: ID# 488897

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)