



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 6, 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

OR2013-19327

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# 504952.

The Office of the Inspector General of the Texas Department of Criminal Justice (the "department") received a request for all information related to the death of a named inmate. You state the department will release some information to the requestor, with redactions under sections 552.117, 552.1175, and 552.147 of the Government Code and pursuant to previous determinations issued by this office, including Open Records Letter No. 2005-01067 (2005).¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.108, 552.130, and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

¹Section 552.024 of the Government Code permits a governmental body to redact information subject to section 552.117 of the Government Code in certain situations without requesting a decision from this office. *See* Gov't Code § 552.024(c). Section 552.1175(f) of the Government Code authorizes a governmental body to redact information under section 552.1175(b), without the necessity of requesting a decision from this office, the home addresses and telephone numbers, emergency contact information, social security number, and family member information of a peace officer as defined by article 2.12 of the Code of Criminal Procedure who properly elects to keep this information confidential. *See id.* § 552.1175(b), (f). 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. *See id.* § 552.147(b). Open Records Letter No. 2005-01067 serves as a previous determination permitting the department to withhold 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 they comply with section 552.1175 of the Government Code, under section 552.117(a)(3) of the Government Code without requesting a decision from this office.

Initially, 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). Although you claim the submitted custodial death report is excepted from disclosure under sections 552.103, 552.108 and 552.134 of the Government Code, 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). Therefore, the department must release the submitted custodial death report, which we have marked, pursuant to article 49.18(b) of the Code of Criminal Procedure.

You assert the remaining information is excepted from release under section 552.134 of the Government Code, which encompasses information relating to inmates of the department and states, in relevant part:

(a) Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the [department] is excepted from the requirements of Section 552.021 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). However, section 552.029 of the Government Code provides:

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.

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. Thus, we find section 552.134 is generally applicable to the remaining information. We note, however, the information in question is related to the death of an inmate in custody. Therefore, basic information about this inmate’s death 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. You state the department is releasing basic information about the inmate's death to the requestor. Accordingly, the department must withhold the remaining information under section 552.134 of the Government Code.²

In summary, the department must release the custodial death report, which we have marked, pursuant to article 49.18(b) of the Code of Criminal Procedure. With the exception of basic information, which you state you are releasing, the department must withhold the remaining information 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Tim Neal
Assistant Attorney General
Open Records Division

TN/tch

²As our ruling under section 552.134 of the Government Code is dispositive, we do not address your remaining arguments against disclosure, except to note basic information may generally not be withheld under sections 552.103 and 552.108. *See* Open Records Decision No. 597 (1991); Gov't Code § 552.108(c). We note 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 or an individual's right to access a deceased patient's mental health records from the professional who provided treatment under chapter 611 of the Health and Safety Code. *See* Occ. Code §§ 159.004-.006; *see also* Health & Safety Code §§ 611.004, .0045; *cf. Abbott v. Tex. State Bd. of Pharmacy*, 391 S.W.3d 253 (Tex. App.—Austin 2012, no pet.) (MPA, subtitle B of title 3 of the Occupations Code, does not provide patient general right of access to his or her medical records from governmental body responding to request for information under Public Information Act).

Ref: ID# 504952

Enc. Submitted documents

c: Requestor
(w/o enclosures)