



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 30, 2014

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

OR2014-19649

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# 542784.

The Office of the Inspector General of the Texas Department of Criminal Justice (the "department") received a request for information pertaining to the death of a named inmate. The department states it has provided some of the requested information to the requestor, but claims the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, and 552.134 of the Government Code.¹ We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note the submitted information contains two custodial death reports, which we have marked. Article 49.18(b) of the Code of Criminal Procedure provides the Office of the Attorney General shall make the custodial death report available to any interested person,

¹Although you also raise sections 552.117, 552.1175, and 552.147 of the Government Code, you have not submitted arguments explaining how these exceptions apply to the submitted information. Therefore, we presume the department no longer asserts these exceptions. See Gov't Codes §§ 552.301, .302.

with the exception of any portion of the report that the attorney general determines is privileged. *See* Crim. Proc. Code art. 49.18(b). The Office of the Attorney General has determined the report and summary of how the death occurred must be released to the public, but any other documents submitted with the report are confidential under article 49.18(b). Although you seek to withhold the reports under sections 552.108 and 552.134 of the Government Code, the exceptions to disclosure found in the Act generally do not apply to information other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Accordingly, the department must release the submitted custodial death reports we have marked pursuant to article 49.18(b) of the Code of Criminal Procedure.

The remaining information contains a court-filed document that is subject to section 552.022(a)(17) of the Government Code, which provides the following:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). Although you assert the information subject to section 552.022, which we have marked, is excepted from disclosure under section 552.108, this section is discretionary and does not make information confidential under the Act. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the department may not withhold the information subject to section 552.022 under section 552.108. However, section 552.134 of the Government Code makes information confidential under the Act. Accordingly, we will consider the applicability of this section to the information subject to section 552.022, as well as the remaining documents.

Section 552.134(a) relates to inmates of the department and provides the following:

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, the following:

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:

(1) the inmate's name, identification number, age, birthplace, physical description, or general state of health or the nature of an injury to or critical illness suffered by the inmate;

...

(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(1), (8). On review, we agree the remaining records constitute information about an inmate for purposes of section 552.134. However, the records contain information that concerns the death of the inmate in custody. Thus, the department must release basic information concerning the death. 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. The department must withhold the remaining information under section 552.134 of the Government Code.²

To conclude, the department must release the custodial death reports we have marked pursuant to article 49.18(b) of the Code of Criminal Procedure and the basic information concerning the death of the inmate at issue in the remaining documents. The department must withhold the remaining information pursuant to 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/>

²As our ruling is dispositive, we do not address your remaining arguments against disclosure, except to note basic information may not be withheld under section 552.108 of the Government Code. *See* Open Records Decision No. 597 (1991); Gov't Code § 552.108(c).

[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,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/cbz

Ref: ID# 542784

Enc. Submitted documents

c: Requestor
(w/o enclosures)