



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 9, 2016

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

OR2016-25008

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# 635902.

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 will withhold information under sections 552.024, 552.1175, and 552.147 of the Government Code.¹ The department claims the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, and 552.134 of the

¹Section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee or official to whom the information pertains timely chooses not to allow public access to the information. *See* Gov't Code § 552.024(c)(2). Section 552.1175(f) of the Government Code authorizes a governmental body to redact under section 552.1175(b) of the Government Code, without the necessity of requesting a decision from this office, the home addresses and telephone numbers, emergency contact information, date of birth, 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(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 under the Act. *See id.* § 552.147(b).

Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, the department informs us some of the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2016-21755 (2016). In Open Records Letter No. 2016-21755, we determined the department must (1) release a custodial death report pursuant to article 49.18(b) of the Code of Criminal Procedure; (2) release basic information under section 552.029(8) of the Government Code; and (3) withhold the remaining information under section 552.134 of the Government Code. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Accordingly, to the extent the information in the current request is identical to the information previously requested and ruled upon by this office, we conclude the department must continue to rely on Open Records Letter No. 2016-21755 as a previous determination and withhold or release the information in accordance with that ruling. To the extent the submitted information is not subject to Open Records Letter No. 2016-21755, we will address the department's arguments against disclosure.

We next note the submitted information contains court-filed documents that are 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 the department asserts the information subject to section 552.022 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 at issue.

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 552.029 of the Government Code provides, in part, that

[n]otwithstanding 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, section 552.134 is explicitly made subject to section 552.029. Although the inmate to whom the submitted 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 applicable to the submitted information. However, the information in question is related to the death of an inmate in custody. Therefore, the department must release basic information about the inmate's death pursuant to section 552.029. The basic information 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. Accordingly, with the exception of basic information under section 552.029(8), the department must withhold the submitted information under section 552.134 of the Government Code.²

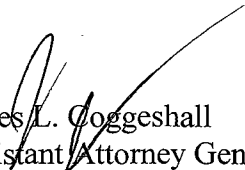
To conclude, to the extent the information in the current request is identical to the information previously requested and ruled upon by this office, we conclude the department must continue to rely on Open Records Letter No. 2016-21755 as a previous determination and withhold or release the information in accordance with that ruling. If the information in the current request is not identical to the information previously requested and ruled upon by this office, then, with the exception of basic information, which the department must release, the department must withhold the submitted information under section 552.134 of the Government Code.

²As our ruling is dispositive, we do not address the other arguments of the department to withhold this information.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/bw

Ref: ID# 635902

Enc. Submitted documents

c: Requestor
(w/o enclosures)