



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

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Mr. Eric K. Miller  
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Mr. John C. West  
General Counsel  
Texas Department of Criminal Justice  
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OR2017-00662

Dear Mr. West and Mr. Miller:

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# 640883.

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to the death of a named inmate. The department's Office of the General Counsel (the "OGC") and the Office of the Inspector General (the "OIG") have submitted separate requests for a decision from this office. The OIG states it does not have some of the requested information.<sup>1</sup> You state the department will redact information

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

pursuant to section 552.147(b) of the Government Code.<sup>2</sup> The OGC claims the submitted information is excepted from disclosure under section 552.103 of the Government Code. The OIG claims the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.1175, and 552.134 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note the submitted information contains a custodial death report. 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, 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 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 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 the OIG seeks to withhold the report under sections 552.108 and 552.134 of the Government Code and the OGC seeks to withhold the report under section 552.103 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 report, which we have marked, pursuant to article 49.18(b) of the Code of Criminal Procedure.

Section 552.108(a) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note section 552.108 is generally not applicable to records of an internal administrative investigation that is purely administrative in nature and does not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution). The OIG states the remaining information pertains to open and pending criminal investigations by the OIG concerning the death of the named inmate. Further, the OIG states release of anything other than basic information at this time could compromise the integrity of the investigation process. Based on this representation and our review, we conclude release of the remaining information would interfere with the detection, investigation, or prosecution of a crime. *See Houston Chronicle Publ’g Co. v. City*

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<sup>2</sup>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. Gov’t Code § 552.147(b).

of *Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court describes law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, we agree section 552.108(a)(1) of the Government Code is applicable to the remaining information.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-187; see also Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of the basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.<sup>3</sup>

In summary, 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. With the exception of the basic information, which must be released, the department may withhold the remaining information under section 552.108(a)(1) 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](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,



Cole Hutchison  
Assistant Attorney General  
Open Records Division

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<sup>3</sup>As our ruling is dispositive, we do not address the remaining arguments against disclosure, except to note basic information is generally not excepted from disclosure under section 552.103 or section 552.134 of the Government Code. See Open Records Decision No. 597 (1991); see also Gov’t Code § 552.029(8) (basic information regarding the death of an inmate in custody is not excepted under section 552.134).

Ref: ID# 640883

Enc. Submitted documents

c: Requestor  
(w/o enclosures)