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ATTORNEY GENERAL OF TEXAS

April 26, 2017

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

OR2017-08876

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# 655352.

The Texas Department of Criminal Justice's Office of the Inspector General (the "department") received a request for information pertaining to a specified in-custody death. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.1175, 552.108, 552.130, and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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). Although the department claims the submitted custodial death report is excepted from disclosure under sections 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.

Section 552.134 of the Government Code is applicable to information related to inmates of the department. Section 552.134(a) states

[e]xcept 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,

[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 generally applicable to the remaining information. We note, 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 that must be released includes the time and place of the incident, the names of inmates and of department employees who were directly 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.¹ Accordingly, except for basic information under section 552.029(8) of the Government Code, the department must withhold the remaining information under section 552.134 of the Government Code.²

¹We note basic information for section 552.134 does not include the identities of witnesses.

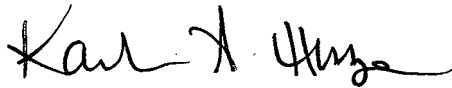
²As we are able to reach this determination, we need not address the department's remaining arguments against disclosure of this information. We note basic information under section 552.029(8) corresponds to the basic front-page information that may not be withheld under section 552.108 of the Government 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).

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. Except for basic information under section 552.029(8) of the Government Code, which must be released, 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,



Kaelan A. Henze
Assistant Attorney General
Open Records Division

KAH/tdw

Ref: ID# 655352

Enc. Submitted documents

c: Requestor
(w/o enclosures)