



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 30, 2017

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

OR2017-14654

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# 664066 (OIG No. 2017-00078).

The Texas Department of Criminal Justice (the "department") received a request for information related to the death of a named inmate. The department states it will withhold information subject to section 552.117 of the Government Code as permitted by section 552.024(c) of the Government Code, will redact certain information pursuant to section 552.1175 of the Government Code, and will withhold social security numbers pursuant to section 552.147(b) of the Government Code.<sup>1</sup> You claim the submitted

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<sup>1</sup>Section 552.117 of the Government Code exempts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body. *See* Gov't Code § 552.117(a)(1). Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the current or former employee or official chooses not to allow public access to the information. *See id.* § 552.024(c). Section 552.1175(f) of the Government Code authorizes a governmental body to redact 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, date of birth, 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).

information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.130, and 552.134 of the Government Code. We have received comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

Initially, we must address the department's obligations under section 552.301 of the Government Code, which prescribes the procedural obligations a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires that a governmental body ask for a decision from this office and state which exceptions apply to the requested information by the tenth business day after receiving the request. Gov't Code § 552.301(b). The department received the request for information on April 5, 2017. Because you do not inform this office the department was closed for business any of the days at issue, we find the department's ten-business-day deadline was April 19, 2017. However, the envelope in which you provided the information required by section 552.301(b) was meter-marked April 25, 2017. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States Mail, common or contract carrier, or interagency mail). Thus, we find the department failed to comply with the requirements mandated by section 552.301(b) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). You raise sections 552.101, 552.102, 552.108, 552.130, and 552.134 of the Government Code for the submitted information. Because sections 552.101, 552.102, 552.130, and 552.134 can provide compelling reasons to overcome the presumption of openness, we will address your arguments under these sections for the information at issue. However, we find you have failed to establish a compelling reason to address your remaining exception.

Next, 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 552.101 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 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 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, 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.<sup>2</sup> Accordingly, except for basic information subject to section 552.029(8) of the Government Code, the department must withhold the remaining information under section 552.134 of the Government Code.<sup>3</sup>

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<sup>2</sup>We note basic information for section 552.134 purposes does not include the identities of witnesses.

<sup>3</sup>As our ruling is dispositive, we need not address your other arguments against disclosure of this information.

In summary, the department must release the submitted custodial death report pursuant to article 49.18(b) of the Code of Criminal Procedure. With the exception of the basic information subject to 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](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,



Sidney M. Pounds  
Assistant Attorney General  
Open Records Division

SMP/nmd

Ref: ID# 664066

Enc. Submitted documents

c: Requestor  
(w/o enclosures)