



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 12, 2017

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

OR2017-15545

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# 665555.

The Office of the Inspector General of the Texas Department of Criminal Justice (the "department") received a request for all information pertaining to the death of a named individual. The department claims the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.130, and 552.134 of the Government Code. We have also 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 requestor's contention the department failed to comply with the procedural requirements a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See id.* § 552.301. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). Additionally, pursuant to section 552.301(d) of the Government Code, a governmental body must, within ten business days of receiving the request for information, provide the requestor with (1) a written statement the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general, and (2) a copy of the governmental body's written communication to the attorney general. *Id.*

§ 552.301(d). In this instance, you state the department received the request for information on April 19, 2017. You inform us the department was closed on April 21, 2017, in observance of a state holiday. We note this office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. Accordingly, the department's ten-business-day deadline was May 4, 2017. The envelope containing the information required by section 552.301(b) is meter-marked May 4, 2017. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Additionally, we note the correspondence the department submitted to this office requesting a ruling reflects, and the requestor acknowledges, the requestor was copied on the correspondence. Consequently, we find the department complied with the requirements of section 552.301 in requesting a decision from this office.

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). Although the department claims the submitted custodial death report is excepted from disclosure under sections 552.101, 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 pursuant to article 49.18(b) of the Code of Criminal Procedure.

Section 552.108(a)(1) 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 . . . 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 the 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). The department states the remaining information relates to an open criminal investigation and release of the information would interfere with that investigation. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Based on these representations and our review, we conclude section 552.108(a)(1) of the Government Code is applicable.

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). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, which must be released, the

department may withhold the remaining information under section 552.108(a)(1) of the Government Code.¹

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 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, 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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/tdw

Ref: ID# 665555

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As our ruling is dispositive, we need not address the department's remaining arguments against disclosure of this information, except to note basic information is generally not excepted from disclosure under section 552.134 of the Government Code. *See* Gov't Code § 552.029(8) (basic information pertaining to alleged crime involving inmate not excepted under section 552.134).