



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 24, 2017

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Mr. John C. West  
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Office of the Inspector General  
Texas Department of Criminal Justice  
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OR2017-24208

Dear Mr. Sfeir and 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# 684054 (TDCJ# ZT0062).

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.<sup>1</sup> The department claims the submitted information is excepted from disclosure under

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<sup>1</sup>Section 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) 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* Gov't Code § 552.147(b).

sections 552.101, 552.102, 552.108, 552.130, 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 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 department seeks to withhold the custodial death report under sections 552.108 and 552.134 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 pursuant to article 49.18(b) of the Code of Criminal Procedure.

The submitted information also contains a court-filed document that is 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(a)(17) 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(a)(17) 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) of the Government Code 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). The department asserts the information subject to section 552.022 consist of information about an inmate confined in a facility operated by the department. Upon review, we agree this information is subject to section 552.134. The exceptions in section 552.029 are not applicable. Therefore, the department must withhold under section 552.134 of the Government Code the information subject to section 552.022.

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 the release of the information at issue 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, 710 (Tex. 1977). The department states the remaining information relates to a pending criminal investigation or prosecution. Based on this representation, we conclude the release of this information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

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 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.<sup>2</sup>

In summary, the department must release the submitted custodial death report pursuant to article 49.18(b) of the Code of Criminal Procedure. The department must withhold under section 552.134 of the Government Code the information subject to section 552.022 of the Government Code. With the exception of basic information, which the department must release, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.

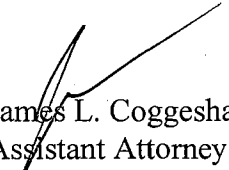
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<sup>2</sup>As our ruling is dispositive, we do not address the other arguments of the department to withhold this information, except to note basic information is generally not excepted from disclosure under section 552.134 of the Government Code. *See* Open Records Decision No. 597 (1991); *see also* Gov't Code § 552.029(8) (basic information regarding death of inmate not excepted from disclosure under section 552.134).

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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/sb

Ref: ID# 684054

Enc. Submitted documents

c: Requestor  
(w/o enclosures)