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ATTORNEY GENERAL OF TEXAS

November 13, 2017

Mr. Eric K. Miller
Assistant General Counsel
Office of the General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2017-25882

Dear 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# 684153 (TDCJ# AL0081).

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to individuals who died while in department custody during a specified time. You state you have no information responsive to a portion of the request.¹ You claim some of the submitted information is excepted from disclosure under section

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

552.134 of the Government Code.² We have considered the exception you claim and reviewed the submitted representative sample of information.³

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). Section 552.134 is explicitly made subject to section 552.029, which provides, in relevant part, the following:

Notwithstanding 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). Upon review, we agree the information at issue constitutes information about an inmate for purposes of section 552.134. We note, and the department acknowledges, the submitted information pertains to the deaths of inmates in custody. Therefore, basic information about the deaths of the inmates is subject to disclosure under section 552.029(8). Basic information under section 552.029(8) includes, among other items, a brief narrative of the incident and a brief description of any injuries sustained by anyone involved. In this instance, the department has marked to withhold some information in its entirety under section 552.134. The remaining information does not contain information sufficient to satisfy the requirement that a brief narrative of the incident and a

²We note, and the department acknowledges, it did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301(b), (e). Nonetheless, because the exception you claim can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

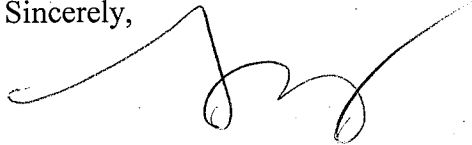
³We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

brief description of any injuries sustained be released as basic information. Accordingly, we determine the department must release a sufficient portion of the information you marked to encompass a brief narrative of the incident and a brief description of any injuries sustained. Thus, with the exception of basic information under section 552.029(8) of the Government Code, which must be released, the department may withhold the information you marked under 552.134 of the Government Code. The department must release the remaining information.

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,



Meagan J. Conway
Assistant Attorney General
Open Records Division

MC/sb

Ref: ID# 684153

Enc. Submitted documents

c: Requestor
(w/o enclosures)