



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 15, 2019

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

OR2019-07363

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# 754726.

The Texas Department of Criminal Justice Office of the Inspector General (the "department") received a request for nine categories of information pertaining to the death of a named individual. You claim the submitted information is excepted from disclosure under section 552.101, 552.102, 552.108, 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 552.101, 552.102, 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 552.134 of the Government Code relates to information about inmates of the department. This exception provides, in relevant part:

(a) Except as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the Texas Department of Criminal Justice 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:

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). Thus, section 552.134 is explicitly made subject to section 552.029. Although the inmate to whom the information at issue 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 applicable to the information at issue. We note, however, the remaining information is related to the death of an inmate in custody. Therefore, basic information about this inmate's death is subject to disclosure under section 552.029(8). Basic information under section 552.029(8) 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, the inmate's department photograph, and information regarding any criminal charges or disciplinary actions that were filed as a result of the incident. Accordingly, with the exception of basic information, which must be released, the department must withhold the remaining information under section 552.134 of the Government Code.

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 must withhold the remaining information under section 552.134 of the Government Code.¹

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.

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information, except to note basic information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) is generally not excepted from public disclosure under section 552.108 of the Government Code. Gov't Code § 552.108(c).

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,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/gw

Ref: ID# 754726

Enc. Submitted documents

c: Requestor
(w/o enclosures)