



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 18, 2019

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

OR2019-19616

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# 776133.

The Texas Department of Criminal Justice's Office of the Inspector General (the "department") received a request for information pertaining to the death of an inmate. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.117, 552.1175, 552.130, 552.134, and 552.147 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). 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 the department claims the submitted custodial death report is excepted from disclosure under sections 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 release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See id.* §§ 552.108(a)(1), .301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The department states the submitted information relates to an open criminal investigation by the department. Based on this representation and our review, we find release of the remaining 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 (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). Thus, section 552.108(a)(1) is applicable to the remaining information.

We note, however, section 552.108 of the Government Code 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 the 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.<sup>1</sup>

In summary, the department must release the 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.

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<sup>1</sup>As our ruling is dispositive, we need not address the department’s remaining arguments against disclosure, except to note basic information is generally not excepted 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).

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,

A handwritten signature in black ink, appearing to read "D. Michelle Case", with a long horizontal flourish extending to the right.

D. Michelle Case  
Assistant Attorney General  
Open Records Division

DMC/mo

Ref: ID# 776133

Enc. Submitted documents

c: Requestor  
(w/o enclosures)