



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 14, 2020

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OR2020-20436

Dear Mr. West and Mr. Vollmer:

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# 839706 (OGC#MW0002 and OR-2020-00085)).

The Texas Department of Criminal Justice (the "department") received three requests from the same requestor for information pertaining to a deceased inmate. The department's Office of the Inspector General (the "OIG") and Office of the General Counsel (the "OGC") have submitted separate briefs, as well as separate documents that each seeks to withhold from disclosure. The OIG states it is releasing some information. The OIG also states it will redact certain information subject to section 552.117 of the Government Code pursuant to Open Records Letter No. 2005-01067 (2005).<sup>1</sup> The OIG also states it will redact information pursuant to section 552.1175 of the Government Code, and social security numbers pursuant to section 552.147(b) of the Government Code.<sup>2</sup> The OGC claims it does

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<sup>1</sup> Open Records Letter No. 2005-01067 serves as a previous determination permitting the department to withhold the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former employees of the department, regardless of whether they comply with section 552.1175 of the Government Code, under section 552.117(a)(3) of the Government Code without requesting a decision from this office.

<sup>2</sup> Section 552.1175(f) of the Government Code authorizes a governmental body to redact under section 552.1175(b), without the necessity of requesting a decision from this office, the home addresses and telephone numbers, emergency contact information, social security number, date of birth, and family member  
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not have information responsive to a portion of the request it received.<sup>3</sup> The OIG claims the information it submitted is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.130, and 552.134 of the Government Code. The OGC claims the information it submitted is excepted from disclosure under sections 552.101, 552.108, and 552.134 of the Government Code. We have considered the submitted arguments and reviewed the submitted representative samples of information.<sup>4</sup>

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). 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. Upon review, we agree the information at issue constitutes information about an inmate confined in a facility operated by the department and is subject to section 552.134. However, we note some of the information at issue pertains to the death of an inmate in custody. Therefore, the department must release basic information regarding the death of

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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* Gov't Code § 552.1175(b), (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. *See id.* § 552.147(b).

<sup>3</sup> We note the Act does not require a governmental body to disclose information that did not exist at the time the governmental body received the request for information. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

<sup>4</sup> We assume the representative samples of records submitted to this office are 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.

the inmate in custody pursuant to section 552.029(8). *See id.* For purposes of section 552.029(8), basic information includes the time and place of the incident, the names of inmates and department employees who were directly involved, a brief narrative of the incident, a brief description of any injuries sustained by anyone involved, and information regarding any criminal charges or disciplinary actions that were filed as a result of the incident.<sup>5</sup> Accordingly, with the exception of basic information, which must be released, the department must withhold the submitted information under section 552.134 of the Government Code.<sup>6</sup>

Finally, the OGC asks this office to issue a previous determination that would authorize the department to withhold certain information related to non-death-row offenders under section 552.134 of the Government Code. *See* Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). We decline to issue such a previous determination at this time. Accordingly, 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Jennifer Copeland  
Assistant Attorney General  
Open Records Division

JC/jm

Ref: ID# 839706

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>5</sup> We note basic information does not include the identities of witnesses for purposes of section 552.134 of the Government Code.

<sup>6</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.