



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 17, 2020

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

OR2020-20586

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# 840069 (OIG Open Records 2020-00087).

The Office of the Inspector General of the Texas Department of Criminal Justice (the "department") received a request for information pertaining to the death of a specified inmate. The department states, and provides documentation showing, it released some information, including a custodial death report, to the requestor. *See* Crim. Proc. Code art. 49.18(b) (pertaining to custodial death reports being made public). Additionally, the department states it will redact information pursuant to sections 552.1175 and 552.147 of the Government Code and Open Records Letter No. 2005-01067 (2005).<sup>1</sup> The department informs us it has submitted for review all the responsive information it has in its

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<sup>1</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 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). 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.

possession.<sup>2</sup> The department claims the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.134 of the Government Code. We have considered the exceptions the department claims and reviewed the submitted information.

Initially, the department states some of the requested information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2012-05256 (2012). In that ruling, we determined with the exception of the basic information, which must be released under section 552.029(8) of the Government Code, the department must withhold the submitted information under section 552.134 of the Government Code. We have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, to the extent the requested information is identical to the information previously requested and ruled upon by this office, we conclude the department must rely on Open Records Letter No. 2012-05256 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, to the extent the information in the instant request is not identical to the information ruled upon by this office in Open Records Letter No. 2012-05256, we will address the department's arguments against disclosure.

Section 552.134 of the Government Code is applicable to information related to inmates of the department. Section 552.134 states, in relevant part:

(a) Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the [department] is excepted from the requirements of Section 552.021 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). However, section 552.029 of the Government Code provides:

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.

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<sup>2</sup> The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

*Id.* § 552.029(8). Thus, the legislature explicitly made section 552.134 subject to section 552.029.

Although the inmate to whom Exhibit C 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, some of the information at issue 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.<sup>3</sup> Accordingly, with the exception of basic information, which the department states it has released, the department must withhold Exhibit C under section 552.134 of the Government Code.<sup>4</sup>

In summary, to the extent the requested information is identical to the information previously requested and ruled upon by this office, we conclude the department must rely on Open Records Letter No. 2012-05256 as a previous determination and withhold or release the identical information in accordance with that ruling. With the exception of basic information, which the department states it has released, the department must withhold Exhibit C under section 552.134 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.

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,

Gerald Arismendez  
Assistant Attorney General  
Open Records Division

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<sup>3</sup> We note basic information for section 552.134 purposes does not include the identities of witnesses.

<sup>4</sup> As our ruling is dispositive, we need not address the department's remaining arguments against disclosure of the submitted information.

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Enc. Submitted documents

c: Requestor  
(w/o enclosures)