



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 23, 2020

Mr. John C. West  
General Counsel  
TDCJ - Office of the Inspector General  
4616 Howard Lane, Suite 250  
Austin, Texas 78728

OR2020-26711

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# 850170 (OIG Open Records 2020.00119).

The Texas Department of Criminal Justice's Office of the Inspector General (the "OIG") received a request for information related to the death of a specified individual. The OIG claims the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.1175, and 552.134 of the Government Code.<sup>1</sup> We have considered the exceptions the OIG claims 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, 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 OIG claims the submitted custodial death report is excepted from disclosure under sections 552.108 and

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<sup>1</sup> Although the OIG also raises section 552.102 of the Government Code, it has not provided any arguments to support this exception. Therefore, we assume the OIG has withdrawn its claim this section applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

552.134 of the Government Code, the exceptions to disclosure found in the Act do not generally apply to information other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, the OIG must release the submitted custodial death report pursuant to article 49.18(b) of the Code of Criminal Procedure.

Section 552.108(a) 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The OIG states the remaining information relates to an ongoing criminal investigation, and release of that information would interfere with the investigation and prosecution of the case. Based upon these representations and our review, we conclude the release of the information at issue 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.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-87; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, the OIG may withhold the remaining information under section 552.108(a)(1) of the Government Code.<sup>2</sup>

In summary, the OIG must release the submitted custodial death report, which we marked, pursuant to article 49.18(b) of the Code of Criminal Procedure. With the exception of basic information, which must be released, the OIG 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.

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

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<sup>2</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

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 A. Arismendez  
Assistant Attorney General  
Open Records Division

GAA/jxd

Ref: ID# 850170

Enc. Submitted documents

c: Requestor  
(w/o enclosures)