



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 22, 2020

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

OR2020-26750

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# 850166.

The Office of the Inspector General of the Texas Department of Criminal Justice (the "department") received a request for information related to the death of a named inmate. The department states it does not have some of the requested information.<sup>1</sup> The department states it will withhold information subject to section 552.117 of the Government Code as permitted by section 552.024(c) of the Government Code.<sup>2</sup> The department also states it will withhold information under section 552.1175 of the Government Code.<sup>3</sup> The department further states it will withhold social security numbers pursuant to section

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<sup>1</sup> The Act does not require a governmental body to release information that did not exist when a request for information was received, create responsive information, or obtain information that is not held by or on behalf of the board. *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 No. 452 at 3 (1986).

<sup>2</sup> Section 552.117 of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body. *See Gov't Code* § 552.117(a)(1). Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the current or former employee or official chooses not to allow public access to the information. *See id.* § 552.024(c).

<sup>3</sup> Section 552.1175(f) of the Government Code authorizes a governmental body to redact under section 552.1175(b) the Government Code, without the necessity of requesting a decision from this office, the home addresses and telephone numbers, emergency contact information, date of birth, social security number, 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(f).

552.147(b) of the Government Code.<sup>4</sup> The department claims the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.130, and 552.134 of the Government Code. We have considered the exceptions the department 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 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 552.134(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.

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<sup>4</sup> 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* Gov’t Code § 552.147(b).

*Id.* § 552.029(8). Upon review, we agree the remaining information constitutes information about an inmate for purposes of section 552.134. However, a portion of the remaining information pertains to the death of the inmate in custody. Thus, pursuant to section 552.029, the department must release basic information from the information at issue. Basic information includes the time and place of the incident, names of inmates and department officials directly involved, a brief narrative of the incident, a brief description of any injuries sustained, and information regarding criminal charges or disciplinary actions filed as a result of the incident.<sup>5</sup> With the exception of basic information related to the death of the inmate in custody, the department must withhold the remaining information under section 552.134 of the Government Code.<sup>6</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 related to the death of the inmate in custody, which must be released, the department must withhold the remaining information 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,

Matthew Taylor  
Assistant Attorney General  
Open Records Division

MT/gw

Ref: ID# 850166

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 for this information, we need not address the remaining arguments against its disclosure.