



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 16, 2022

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

OR2022-24379

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# 965060 (OIG Open Records Request 2022.00097).

The Office of the Inspector General of the Texas Department of Criminal Justice (the "department") received a request for information pertaining the death of a named inmate; information pertaining to named inmate; information pertaining to employees who had contact with the named inmate; the autopsy report for the named inmate; and specified policies. You state you have released some information to this requestor. You state the department does not have information pertaining to portions of the request.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.117, 552.1175, 552.130, and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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

¹ 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 266 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

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). Although you claim the submitted custodial death report is excepted from disclosure under section 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.

Id. § 552.029(8). Thus, the legislature explicitly made section 552.134 subject to section 552.029. 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. Thus, we find section 552.134 is generally applicable to the information at issue. However, we note, and you acknowledge, the information in question 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 department employees who were 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. Accordingly, with the exception of basic information, which you state you released, the

department must withhold the remaining information under section 552.134 of the Government Code.²

In summary, the department must release the submitted custodial death report pursuant to article 49.18(b) of the Code of Criminal Procedure. With the exception of basic information, which you state you 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,

Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/jm

Ref: ID# 965060

Enc. Submitted documents

c: Requestor
(w/o enclosures)

² As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.