



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 13, 2022

Ms. Cynthia Trevino
Counsel for the City of Uvalde
Denton Navarro Rocha Bernal & Zech, PC
2517 North Main Avenue
San Antonio, Texas 78212-4685

OR2022-27984

Dear Ms. Trevino:

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# 969005 (ORR# 22-192).

The City of Uvalde (the "city"), which you represent, received a request for a specified custodial death report. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.1088 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note the submitted information consists of 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 you claim the submitted custodial death report is excepted from disclosure under sections 552.103 and 552.108 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). Additionally, the city seeks to withhold the custodial death report under section 552.101 in conjunction with common-law privacy. However, section 49.18 makes custodial death reports expressly public. Information that is specifically made public by statute may not be withheld under section 552.101 on the basis of common-law privacy. *See Collins v. Tex Mall, L.P.*, 297 S. W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts

with common-law principle); *Center Point Energy Houston Elec. LLC v. Harris County Toll Rd. Auth.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law). Therefore, the public's right of access to the custodial death report and summary prevails over common-law privacy, and no portion of the submitted custodial death report and summary may be withheld on that basis. Accordingly, the city must release the submitted custodial death report and summary pursuant to article 49.18(b) of the Code of Criminal Procedure.

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,

Kelly McWethy
Assistant Attorney General
Open Records Division

KM/mo

Ref: ID# 969005

c: Requestor