



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 5, 2022

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

OR2022-30647

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# 976657.

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 an inmate. You state you have released some information to this requestor. You also state the department will redact certain information under sections 552.117 and 552.1175 of the Government Code, and social security numbers pursuant to section 552.147(b) of the Government Code.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

¹ 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). 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 id.* § 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).

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 (the “OAG”) determines is privileged, the OAG shall make the report public. *See* Crim. Proc. Code art. 49.18(b). Although the department claims the submitted custodial 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). Additionally, the department 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. 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, 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.² Accordingly, with the exception of basic information, which must be released, the department must withhold the remaining information under section 552.134 of the Government Code.³

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 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,

Pearlie Gault
Assistant Attorney General
Open Records Division

PG/jxd

Ref: ID# 976657

Enc. Submitted documents

c: Requestor
(w/o enclosures)

² We note basic information does not include the identities of witnesses for purposes of section 552.134 of the Government Code.

³ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.