



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 15, 1997

Ms. Tamara Armstrong
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR97-2299

Dear Ms. Armstrong:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 110454.

The Travis County Sheriff's Office (the "sheriff") received an open records request for certain records pertaining to the custodial death of Jesse Davila, Jr. Specifically, the requestor seeks the following:

The Death in Custody Report.

Any and all photographs taken of the deceased by the Police Department and the Medical Examiners Office on August 17, 1997.

All police booking files pertaining to the deceased for the year 1996 and 1997. These files should include medical screenings, reason for arrest, time served, and any medical treatment the descendant [sic] received during time incarcerated.

The names of jailers on duty at the County Booking Facility on August 16th and 17th.

The names of inmates incarcerated at the County Booking Facility on August 16th and 17th, especially those in the same cell as Jesse Davila Jr. and surrounding area.

You state that you have made available to the requestor Part I of the Custodial Death Report. You seek to withhold the remaining requested information pursuant to sections 552.101 and 552.108 of the Government Code.

Section 552.101 of the Government Code protects “information considered to be confidential by law, either constitutional, *statutory*, or by judicial decision.” (Emphasis added.) We agree that the sheriff must withhold pursuant to statutory law all criminal history information obtained from the TCIC and NCIC. The dissemination of CHRI obtained from the NCIC network is limited by federal law. *See* 28 C.F.R. § 20.1; Open Records Decision No. 565 (1990) at 10-12. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 (1990) at 10-12. Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release the CHRI except to another criminal justice agency for a criminal justice purpose. Gov’t Code § 411.089(b)(1). Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. Furthermore, any CHRI obtained from the Texas Department of Public Safety or any other criminal justice agency must be withheld as provided by Government Code chapter 411, subchapter F. The sheriff therefore must withhold any criminal history information obtained from the TCIC and NCIC pursuant to section 552.101 of the Government Code.

Article 49.18(b) of the Code of Criminal Procedure requires that law enforcement agencies complete custodial death reports and file those reports with the attorney general, who “shall make the report, with the exception of any portion of the report that the attorney general determines is privileged, available to any interested party.” In Open Records Decision No. 521 (1989) at 5, this office held that under article 49.18(b), in conjunction with a directive issued by the Office of the Attorney General, section one of custodial death reports filed with this office is public information. All remaining portions of the custodial death report, i.e. Parts II through V, including all photographs of the deceased that were taken during the course of the sheriff’s investigation of the death, are deemed privileged under article 49.18(b) and must be withheld from the public. Open Records Decision No. 521 (1989) at 5. Accordingly, the sheriff must withhold all portions of Parts II through V of the custodial death report.

Article 49.18(b) of the Code of Criminal Procedure does not, however, close to the public all information held by a local law enforcement agency simply because the information is also included in or attached to a custodial death report submitted to the attorney general; if a governmental body receives a request for information otherwise generated or maintained by the law-enforcement agency in the regular course of its business, those documents may be withheld only if one of the Open Record Act’s exceptions or another specific law protects them. Open Records Decision No. 521 (1989) at 7.

Much of the requested information may be characterized as having been created during the regular course of police business, e.g. booking information, identities of jail guards on duty, and identities of inmates housed in the jail. You contend these categories of information are excepted from required public disclosure pursuant to section 552.108 of the Government Code because they are "relevant" to an on-going internal affairs investigation into the custodial death. You therefore contend that the release of the requested information at this time would interfere with law enforcement. *See* Gov't Code § 552.108(a)(1), (b)(1). We note, however, that internal affairs investigations are administrative, as opposed to criminal, in nature; absent criminal investigation or prosecution, section 552.108 is inapplicable to records of internal affairs investigations. *See Morales v. Ellen*, 840 S.W.2d 519, 526 (Tex. App.--El Paso 1992, writ denied). Because you have not demonstrated the pendency of a criminal investigation or prosecution, we conclude that the sheriff may not withhold these materials pursuant to section 552.108.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch
Assistant Attorney General
Open Records Division

VDP/RWP/glg

Ref.: ID# 110454

Enclosures: Submitted documents

cc: Ms. Belinda E. Herrera
2000 Burton Drive, #264
Austin, Texas 78741
(w/o enclosures)

