



April 16, 2001

Mr. James L. Hall
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342

OR2001-1507

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 146002.

The Texas Department of Criminal Justice (the "department") received a request for all information pertaining to the death of the requestor's son, an inmate, especially the autopsy report. You state regarding the request for the autopsy report that the requestor has been referred to the department's Health Services Division. You have submitted for our review the department's internal affairs investigation file arising from the death of the inmate, an individual who died while in the department's custody. You claim that the requested information is excepted from disclosure under sections 552.108 and 552.131 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

At the outset, although you state that the requestor was referred to the Health Services Division for a copy of the autopsy report, you do not state whether the autopsy report was released to the requestor. The autopsy report was not submitted to this office for review. See Gov't Code § 552.301(e)(1)(D). If the autopsy report has not yet been released to the requestor, we advise that this information is "presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information." Gov't Code § 552.302. As no compelling reason has been shown for withholding the autopsy report, we conclude this information must be released to the requestor.

Moreover, section 11 of article 49.25 of the Code of Criminal Procedure provides as follows:

The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate. . . . *The records are subject to required public disclosure in accordance with Chapter 552, Government Code, except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with Chapter 552, Government Code, but is subject to disclosure:*

- (1) under a subpoena or authority of other law; or
- (2) *if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.*

Code-Crim. Proc. art. 49.25, § 11 (emphasis added). Pursuant to the above provision, the autopsy report is a public record and thus is subject to release to the requestor in its entirety. We next address the submitted documents.

Section 552.131 relates to inmates of the department and provides in relevant part:

- (a) Except as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the Texas Department of Criminal Justice 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 § 552.131(a).¹ Section 552.029 of the Government Code provides in relevant part:

Notwithstanding . . . Section 552.131, the following information about an inmate who is confined in a facility operated by or under a contract with the Texas Department of Criminal Justice is subject to required disclosure[:]

...

- (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.*

¹As of the date of this letter ruling, four different sections of the Act were denominated as section 552.131. Sections 552.131 and 552.029, relating to inmates of the department, were added to chapter 552 of the Government-Code by the Act of May 26, 1999, 76th Leg., R.S., ch.783, §§ 1, 2, 1999 Tex. Gen. Laws 3407-08.

Gov't Code § 552.029(8) (emphasis added). Thus, the legislature explicitly made section 552.131 subject to section 552.029. Pursuant to section 552.029(8), "basic information" regarding the death of an inmate in custody or an alleged crime involving the inmate is subject to required disclosure. The basic information that is subject to disclosure under section 552.029(8) includes the time and place of the incident, the names of inmates and of department employees who were involved, a brief narrative of the incident, a brief description of any injuries sustained by anyone involved, and information regarding any criminal charges or disciplinary actions that were filed as a result of the incident. You represent that the basic information has been released to the requestor. We note, however, that your correspondence to the requestor dated February 8, 2001, although it provides some information regarding the incident, does not provide the following information: the time and place of the incident, the names of inmates (other than the deceased) and of department employees who were involved, a brief description of injuries sustained by anyone involved, and any criminal charges or disciplinary actions that were filed as a result of the incident. We emphasize that pursuant to section 552.029, this information must be released to the requestor.² As to the remainder of the submitted information, we conclude it is excepted from disclosure under section 552.131.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental

²As to the section 552.108 assertion, because we are able to resolve the matter under section 552.131, we need not address section 552.108 except to note that the information that is subject to release under section 552.029 is not excepted by section 552.108. See Gov't Code § 552.108(c).

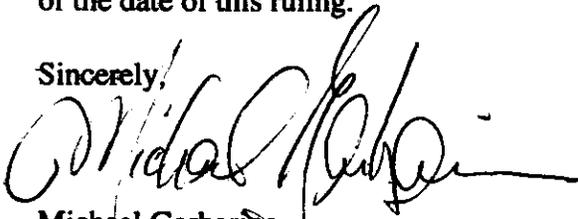
body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Garbarino
Assistant Attorney General
Open Records Division

MG/seg

Ref: ID# 146002

Encl. Submitted documents

cc: Ms. Rose E. Wilson
9409 B Boston Avenue
Lubbock, Texas 79423
(w/o enclosures)