



March 20, 2002

Mr. James L. Hall
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 13084
Austin, Texas 78711-3084

OR2002-1396

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 160095.

The Texas Department of Criminal Justice (the "department") received a request for the suicide letter and investigation relating to the custodial death of an inmate. You state that in accordance with Open Records Decision No. 521 (1989), the department has released Part I of the custodial death report.¹ You also indicate that you have provided the requestor with basic information about the death as required by section 552.029(8) of the Government Code. We note that you did not include the requested suicide letter with your submission to this office. We therefore assume that you have released this letter to the requestor. If you have not, you must do so now. *See* Gov't Code §§ 552.301 (governmental body seeking to withhold information must, within fifteen business days of receiving request, supply this office with copy of specific information requested, labeled to indicate which exceptions apply to which parts), .302 (failure to comply with 552.301 creates presumption requested information is public; to overcome presumption governmental body must demonstrate compelling reason to withhold information). You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.134 of the

¹ Part I of a custodial death report includes the name, sex, ethnicity, date and time of the arrest of the deceased; the criminal charge against the deceased; the exact location of the deceased at the time of death; the nature, date, and time of death; the medical cause of death; and the specific description of how the death occurred. Open Records Decision No. 521 (1989).

Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You first assert that a portion of the requested information consists of confidential medical records. The release of medical records is governed by the Medical Practice Act (the "MPA"). Occ. Code §§ 151.001-165.160. Section 159.002 of the Occupations Code provides in pertinent part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

When a patient is deceased, his personal representative may consent to the release of his records. Occ. Code § 159.005(a)(5). This consent must be written and signed by the personal representative and must specify (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Occ. Code §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Occ. Code § 159.002(c); Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). For your convenience, we have marked the medical records subject to the MPA.

We next address your argument that the remaining information is excepted from disclosure by section 552.134 of the Government Code. Section 552.134 relates to inmates of the department. This exception 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 § 552.134(a). The legislature explicitly made section 552.134 subject to section 552.029. *Id.* Section 552.029 provides, among other things, that basic information regarding

the death of an inmate in custody must be released. *Id.* § 552.209(8).² Since you state that you have already released this information, we conclude that the department must withhold the remaining information under section 552.134. As we are able to make this determination, we need not address your arguments regarding sections 552.108 and 552.117.³

In summary, the medical records we have marked may be released only in accordance with the MPA. As you have released the basic information concerning the custodial death as required by section 552.029(8), you must withhold all remaining information under section 552.134.

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 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.

² The basic information subject to release under 552.029(8) includes the time and place of the incident, the names of the inmates and department employees who were directly 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.

³ We note that section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." See Gov't Code § 552.108(c); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 at 3-4 (1976).

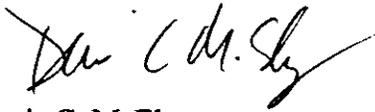
The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/seg

Ref: ID# 160095

Enc. Marked documents

c: Ms. Debbie Gill
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(w/o enclosures)