OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

April 9, 2002

Mr. Jeffrey L. Schrader
Assistant Criminal District Attorney
Civil Section
Bexar County
300 Dolorosa, 5th Floor
San Antonio, Texas 78205-3030

OR2002-1741

Dear Mr. Schrader:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 161004.

The Bexar County Sheriff's Office (the "sheriff") received a request for "a complete copy of the Police Investigation Report, including any witnesses' statements" concerning the death of an individual in custody in the Bexar County Jail. You have submitted a copy of the custodial death report and other documents that appear to be attachments to the report as information responsive to this request. You state that the sheriff has released basic information contained in Part I of the custodial death report. You contend that all other responsive information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the sheriff's obligations under section 552.301 of the Government Code. Under subsections 552.301(a) and (b), a governmental body seeking to except requested information from disclosure must–by the tenth business day after the date on which the governmental body received the open records request–ask for a decision from this office and at that time state what exceptions apply. Gov't Code § 552.301(a), (b). The requestor first asked the sheriff for the submitted information in a letter dated October 27, 2001. Neither our records nor your brief indicates that the sheriff sought a ruling in response to the initial request. Having received no information, the requestor sent a follow-up in January 2002. It was only after the sheriff received this second request that it

sought a ruling from this office. Thus, the sheriff missed its statutory deadline for requesting a ruling by approximately two months.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.–Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). As section 552.101 provides a compelling reason to overcome the presumption of openness, we will address your arguments under that exception. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by showing that information affects third party interests or is made confidential by another source of law).

In Open Records Decision No. 521, this office addressed the confidentiality of custodial death reports and their attachments. Specifically, this office concluded that under article 49.18(b) of the Code of Criminal Procedure, in conjunction with a directive issued by the Office of the Attorney General, Part I of a custodial death report filed with this office is public information but Parts II through V of the report, including any attachments, are confidential. *See* Open Records Decision No. 521 at 4-5 (1989); *see also* Code Crim. Proc. art. 49.18(b) (attorney general shall make report, with exception of any portion of report that attorney general determines is privileged, available to any interested person).

You state that you "have released basic information contained in Part I of the custodial death report to the requestor." In the context of public information requests, "basic information" is a term of art used to refer to information that must be released when certain law enforcement records are withheld under section 552.108 of the Government Code. As such, the term is inapplicable in the present context. Open Records Decision No. 521 states that *all* of Part I is public and must be released. ORD No. 521 at 4. If you have not already released all of Part I, you must do so now. Parts II through V of the report and all attachments thereto must be withheld under article 49.18(b) in conjunction with section 552.101 of the Government Code. Because our decision regarding article 49.18(b) is dispositive, we need not address your other arguments.

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).

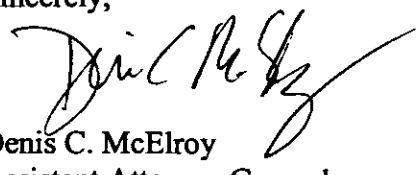
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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. 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# 161004

Enc. Submitted documents

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Claims Examiner
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