ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 22, 2003

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

OR2003-5935

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# 186464.

The Texas Department of Criminal Justice (the "TDCJ") received a request for all records pertaining to the deaths of two named inmates. This office has already ruled on the request for records pertaining to inmate Miguel Morales. *See* Open Records Letter No. 2003-4365 (2003). We will, therefore, address your remaining request for records pertaining to Robert Coleman. You argue that the requested information is excepted from disclosure under sections 552.101, 552.108 and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first note that the requested information includes a custodial death report. Article 49.18(b) of the Code of Criminal Procedure requires law enforcement agencies to complete custodial death reports and file them with the Attorney General, who is required to make the report available to any interested party, except for any portion that the Attorney General deems privileged. This office has held that under article 49.18(b) in conjunction with a directive issued by the Office of the Attorney General, section I of a custodial death report is public information. All remaining portions of the report, including all attachments, are deemed privileged and must be withheld. *See* Open Records Decision No. 521 (1989). We conclude that, pursuant to article 49.18 of the Code of Criminal Procedure, you must release section I of the custodial death report, but are required to withhold sections II through V. *Id.* Similarly, any documents compiled and attached to the custodial death report must be withheld. *Id.* at 7.

We next address your claim under section 552.108 of the Government Code. Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why section 552.108 is applicable to that information. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You state that the rest of the submitted information is related to an ongoing criminal investigation. Based on your representation, we find that section 552.108(a)(1) is applicable. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

We note, however, that section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle.* The TDCJ must release basic information, including a detailed description of the offense, even if this information does not literally appear on the front page of an offense or investigation report. *See Houston Chronicle*, 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing the types of information deemed public by *Houston Chronicle*). The TDCJ may withhold the rest of the requested information under section 552.108(a)(1).[1]

In summary, the TDCJ must release section I of the custodial death report, but must withhold sections II through V pursuant to article 49.18 of the Code of Criminal Procedure. Further, after releasing basic front-page information, the TDCJ may withhold the requested information relating to the ongoing investigation under section 552.108 of the Government Code.

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.

---

[1] As we are able to make these determinations under section 552.108, we decline to address your arguments under sections 552.101 and 552.134.

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).

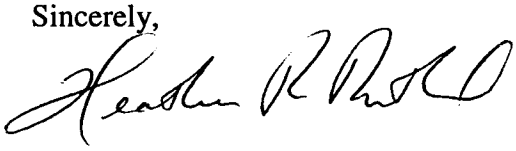
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Dep't of Pub. 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,



Heather R. Rutland
Assistant Attorney General
Open Records Division

HRR/sdk

Ref: ID# 186464

Enc: Submitted documents

c: Ms. Sathya Gosselin
ACLU
P.O. Box 3629
Austin, Texas 78764-3629
(w/o enclosures)