



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 31, 2006

Ms. Karen Rabon
Assistant Attorney General
Public Information Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2006-12862

Dear Ms. Rabon:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 263489.

The Office of the Attorney General (the "OAG") received three requests for information submitted pursuant to article 49.18(b) of the Code of Criminal Procedure pertaining to 1) the custodial deaths of three named persons, 2) the custodial deaths in Harris County in 2006, and 3) the custodial deaths in five specific counties in the three years prior to the date of the request. The OAG asserts most of the information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the OAG's arguments and have reviewed the submitted information. We have also received and considered the comments of Tarrant County and the cities of Arlington and Richardson. *See Gov't Code § 552.304* (person may submit comments stating whether information should be released).

The submitted documents are custodial death reports and their attachments. In Open Records Decision No. 521 at 5 (1989), we concluded that under article 49.18(b) of the Code of Criminal Procedure in conjunction with a directive issued by the OAG, section one of a custodial death report filed with this office was public information and must be released, but sections two through five of the report, as well as attachments to the report, were confidential. *See* Crim. Proc. Code 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). In 2003, the OAG revised the format of a custodial death report. A custodial death report now consists of two pages and an attached summary of how the death occurred. The OAG has determined that the two-page report and summary must be released to the public; however, any other documents submitted with the revised report are confidential under article 49.18 of the Code of Criminal Procedure.

The OAG has released the two-page reports and summaries and contends it may rely on Open Records Letter No. 2001-2947 (2001) as a previous determination for withholding the attachments to the reports under article 49.18(b). However, the prior ruling addressed the pre-2003 reports and the reports at issue are the reports created since 2003. Thus, the prior ruling does not serve as a previous determination because the circumstances have changed. *See* Open Records Decision No. 673 (2001) (setting forth the four criteria for a “previous determination”). Nevertheless, the OAG must withhold the attachments to the custodial death reports that were submitted to the OAG under article 49.18(b). Because article 49.18(b) is dispositive, we do not address any other assertions.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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).

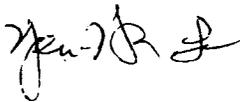
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

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 Office of the Attorney General 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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 263489

Enc: Submitted documents

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