



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 12, 2006

Ms. Julia M. Vasquez
First Assistant City Attorney
City of Wichita Falls
P. O. Box 1431
Wichita Falls, Texas 76307

OR2006-14576

Dear Ms. Vasquez:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 266698.

The City of Wichita Falls (the "city") received three requests for information pertaining to a named individual and a specified incident. You claim that the submitted information is excepted from disclosure under sections 552.103, 552.108, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information includes a custodial death report. In 2003, the Office of the Attorney General (the "OAG") revised the format of a custodial death report. Previously, the report consisted of five sections. 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). 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. In this instance, the submitted information includes the revised custodial death report form. The two-page custodial death report must be released under article 49.18 of the Code of Criminal Procedure.

Next, you inform us that the remaining responsive information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2006-10036 (2006) on August 30, 2006. You indicate that there has not been any change in the law, facts, or circumstances on which this prior ruling was based. We therefore conclude that the city may continue to rely on our decision in Open Records Letter No. 2006-10036 with respect to the remaining submitted information.¹ See Gov't Code § 552.301(f); Open Records Decision No. 673 (2001) (setting forth the four criteria for a "previous determination").

In summary, the custodial death report must be released under article 49.18 of the Code of Criminal Procedure. The city may continue to rely on our decision in Open Records Letter No. 2006-10036 with respect to the remaining submitted information. As we reach this conclusion, we need not address your remaining arguments against disclosure.

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

¹The four criteria for this type of "previous determination" are 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the attorney general's prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. See Open Records Decision No. 673 (2001).

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,



Jaime L. Flores
Assistant Attorney General
Open Records Division

JLF/eb

Ref: ID# 266698

Enc. Submitted documents

c: Mr. Daniel Sullivan
100 East 15th Street, Suite 120
Fort Worth, Texas 76102
(w/o enclosures)