



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 25, 2011

Mr. John C. West
General Counsel
TDCJ - Office of the Inspector General
4616 West Howard Lane, Suite 250
Austin, Texas 78728

OR2011-04089

Dear Mr. West:

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# 412567 (OIG Open Records 2011-00002).

The Texas Department of Criminal Justice's Office of the Inspector General (the "department") received a request for the medical file, history of medical attention, manner of death, and autopsy report related to a named individual. You state the department does not maintain some of the records responsive to the request.¹ You state the department has released the information submitted as Exhibit B with redactions pursuant to section 552.147(b).² You claim the remaining information is excepted from disclosure under sections 552.101, 552.102, 552.108, and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). The Texas Supreme Court has held section 552.102(a) excepts from disclosure

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1–2 (1990), 452 at 3 (1986), 362 at 2 (1983).

²Section 552.147 of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b).

the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010). Having reviewed the information at issue, we agree the information you have marked in Exhibit B must be withheld under section 552.102(a) of the Government Code.

Section 552.134 of the Government Code encompasses information relating to inmates of the department and states, in relevant part:

(a) Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the [department] is excepted from the requirements of Section 552.021 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). However, section 552.029 of the Government Code provides:

Notwithstanding Section . . . 552.134, the following information about an inmate who is confined in a facility operated by or under a contract with the [department] is subject to required disclosure under Section 552.021:

...

(8) basic information regarding the death of an inmate in custody, an incident involving the use of force, or an alleged crime involving the inmate.

Id. § 552.029(8). Thus, the legislature explicitly made section 552.134 subject to section 552.029.

You claim section 552.134 for the information submitted as Exhibit C. We note although the inmate to whom the submitted information pertains is deceased, section 552.134 is applicable to information that relates to the decedent as an inmate. Thus, we find section 552.134 is generally applicable to the submitted information. We note, however, the information in question is related to the death of an inmate in custody. Thus, basic information about this incident is subject to disclosure under section 552.029(8). Basic information under section 552.029(8) includes the time and place of the incident, the names of inmates and of department employees who were 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.

We note in this instance, the requestor, a representative of the Office of Consulado General De Mexico, asserts a right of access to the information at issue pursuant to Article 36 of the

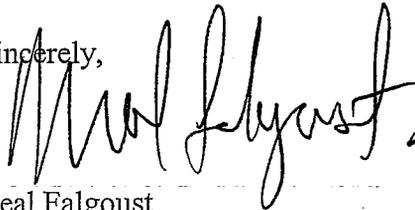
Vienna Convention on Consular Relations. Article 36 of the Vienna Convention on Consular Relations provides consular officers the right to communicate and visit with nationals of the sending state, including those who are in prison or custody or who have been detained. However, Article 36 of the Vienna Convention on Consular Relations does not grant consular officers access to confidential records of our state.

Therefore, in summary, the department must withhold the information you have marked in Exhibit B under section 552.102(a) of the Government Code. With the exception of basic information, which must be released under section 552.029(8), the department must withhold the information submitted as Exhibit C under section 552.134 of the Government Code.³

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/dls

Ref: ID# 412567

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³As our ruling under section 552.134 of the Government Code is dispositive, we do not address your remaining arguments against disclosure, except to note basic information may not be withheld under section 552.108. See Gov't Code § 552.108(c).