



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 19, 2016

Mr. John C. West
Office of the Inspector General
Texas Department of Criminal Justice
4616 West Howard Lane, Suite 250
Austin, Texas 78728

OR2016-08761

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# 609237.

The Office of the Inspector General of the Texas Department of Criminal Justice (the "department") received a request for information pertaining to the investigations of the deaths of two named inmates. The department claims the requested information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.130, and 552.134 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note the requested information pertaining to one of the named inmates was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2015-23174 (2015). We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Accordingly, the department must rely on Open Records Letter No. 2015-23174 as a previous determination and withhold or release the identical information in accordance with that ruling.¹

We next note the submitted information contains custodial death reports. Article 49.18(b) of the Code of Criminal Procedure provides the Office of the Attorney General shall make the custodial death report available to any interested person, with the exception of any

¹See Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

portion of the report that the attorney general determines is privileged. *See* Crim. Proc. Code art. 49.18(b). The Office of the Attorney General has determined the report and summary of how the death occurred must be released to the public, but any other documents submitted with the report are confidential under article 49.18(b). Although you seek to withhold the reports under sections 552.108 and 552.134 of the Government Code, the exceptions to disclosure found in the Act generally do not apply to information other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Accordingly, the department must release the submitted custodial death reports pursuant to article 49.18(b) of the Code of Criminal Procedure.

Section 552.134(a) relates to inmates of the department and provides the following:

Except as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the [department] is excepted from [required public disclosure] 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). Section 552.134 is explicitly made subject to section 552.029, which provides, in relevant part, the following:

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:

(1) the inmate's name, identification number, age, birthplace, physical description, or general state of health or the nature of an injury to or critical illness suffered by the inmate;

. . .

(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(1), (8). On review, we agree the remaining records constitute information about an inmate for purposes of section 552.134. However, the records contain information that concerns the death of the inmate at issue while in custody, as well as injuries suffered by the inmate and incidents involving the use of force. Thus, pursuant to section 552.029 the department must release basic information concerning the inmate's death, the nature of the inmate's injuries, and incidents involving the use of force. Basic information includes the time and place of the incident, names of inmates and department officials directly involved, a brief narrative of the incident, a brief description of any injuries sustained, and information regarding criminal charges or disciplinary actions filed as a result of the incident.

The department must withhold the remaining information under section 552.134 of the Government Code.²

To conclude, the department must rely on Open Records Letter No. 2015-23174 as a previous determination and withhold or release the identical information in accordance with that ruling. The department must release the custodial death reports pursuant to article 49.18(b) of the Code of Criminal Procedure. Pursuant to section 552.029 of the Government Code, the department must release basic information concerning the death of the inmate at issue, the nature of the inmate's injuries, and incidents involving the use of force. The department must withhold the remaining information under section 552.134 of the Government Code.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/bhf

Ref: ID# 609237

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we do not address your remaining arguments against disclosure, except to note basic information may not be withheld under section 552.108 of the Government Code. *See* Open Records Decision No. 597 (1991); Gov't Code § 552.108(c).