



September 6, 2001

Mr. Leonard W. Peck, Jr.  
Assistant General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342

OR2001-3963

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 151609.

The Texas Department of Criminal Justice (the "department") received a request for the witness list for the execution of a named TDCJ inmate, and for information about the inmate's natural and adoptive parents. You claim that the requested information is excepted from disclosure under sections 552.101, 552.115, and 552.131 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.131 of the Government Code relates to information about inmates of the department.<sup>1</sup> Section 552.131 provides in relevant part:

(a) Except as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the Texas Department of Criminal Justice 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.

(b) Subsection (a) does not apply to:

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<sup>1</sup>As of the date of this letter ruling, four different sections of the Act were denominated as section 552.131. Sections 552.131 and 552.029, relating to inmates of the department, were added to chapter 552 of the Government Code by the Act of May 26, 1999, 76th Leg., R.S., ch.783, §§ 1, 2, 1999 Tex. Gen. Laws 3407-08.

(2) information about an inmate sentenced to death.

Gov't Code § 552.131(a), (b)(2). You inform us that the named inmate (TDC# 000622) was confined in a TDCJ facility, and was an inmate sentenced to death. You further inform us that the inmate had previously been incarcerated in a TCDJ facility (TDC# 264207), but that the information contained in his TDC# 264207 file "was included in his file under TDC# 000622." Thus, as the submitted information is maintained in file TDC# 000622, we conclude that it comprises information about an inmate sentenced to death. Section 552.131 therefore does not apply.

Further, you assert that a death certificate is excepted under section 552.115 of the Government Code. Birth or death records maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official are excepted from required public disclosure under section 552.115 of the Government Code. However, since the death certificate at issue does not appear to be held by the bureau of vital statistics or local registration officials, section 552.115 is inapplicable.<sup>2</sup>

Finally, we consider your claim that the responsive information is excepted from public disclosure under common law privacy. Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 also encompasses the doctrines of common law and constitutional privacy. The common law right to privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The constitutional right to privacy protects two interests. Open Records Decision No. 600 at 4 (1992) (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)). The first is the interest in independence in making certain important decisions related to the "zones of privacy" recognized by the United States Supreme Court. Open Records Decision No. 600 at 4 (1992). The zones of privacy recognized by the United States Supreme Court are matters pertaining to marriage, procreation, contraception, family relationships, and child rearing and education. *See id.* The second interest is the interest in avoiding disclosure of personal matters.

The test for whether information may be publicly disclosed without violating constitutional privacy rights involves a balancing of the individual's privacy interests against the public's need to know information of public concern. *See* Open Records Decision No. 455 at 5-7 (1987) (citing *Fadjo v. Coon*, 633 F.2d 1172, 1176 (5th Cir. 1981)). The scope of information considered private under the constitutional doctrine is far narrower than that

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<sup>2</sup>Although you also raise section 192.022 of the Health and Safety Code, we note that the section applies to applications for delayed birth certificates, not to death certificates.

under the common law; the material must concern the "most intimate aspects of human affairs." See Open Records Decision No. 455 at 5 (1987) (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)).

This office has applied privacy to protect certain information about incarcerated individuals. See Open Records Decision Nos. 430 (1985), 428 (1985), 185 (1978). Citing *State v. Ellefson*, 224 S.E.2d 666 (S.C. 1976), as authority, this office held that those individuals who correspond with inmates possess a "first amendment right . . . to maintain communication with [the inmate] free of the threat of public exposure;" and that this right would be violated by the release of information that identifies those correspondents, because such a release would discourage correspondence. Open Records Decision No. 185 (1978). Implicit in this holding is the fact that an individual's association with an inmate may be intimate or embarrassing. The information at issue in Open Records Decision No. 185 was the identities of individuals who had corresponded with inmates. The rights of those individuals to anonymity was found to outweigh the public's interest in this information. *Id.*; see Open Records Decision No. 430 (1985) (list of inmate visitors protected by constitutional privacy of both inmate and visitors). In the present case, the information at issue is the identities of the immediate family members of an inmate who was executed. This information is found on the former inmate's consolidated record form, as well as on his correspondence and visitors list. We conclude that this information constitutes highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and that the information is not of legitimate concern to the public. Therefore, the highlighted portions of the requested information must be withheld as confidential under section 552.101 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. *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 Department of Public 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 General Services 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. 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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/seg

Ref: ID# 151609

Enc. Submitted documents

c: Ms. Karen St. Cyr Beach  
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(w/o enclosures)