



October 16, 2002

Mr. James L. Hall
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342

OR2002-5873

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 170764.

The Texas Department of Criminal Justice (the “department”) received a request for the following categories of information: 1) a list of property that was in the possession of a named inmate at the time he was taken into custody by the department, 2) a list of property that was confiscated from the inmate, and 3) the department’s rules and regulations regarding the confiscation and disposal of inmate property. You state that the department will make available to the requestor the requested rules and regulations. You contend that the remaining requested information is excepted from required disclosure under section 552.101 of the Government Code in conjunction with the constitutional right of privacy.

As you noted in your brief to this office, section 552.134 of the Government Code is not applicable in this instance. Section 552.134 of the Government Code excepts from disclosure information obtained or maintained by the department which relates to an inmate who is confined in a facility operated by or under contract with the department. Gov’t Code § 552.134(a). However, section 552.134(b) states that the provisions of section 552.134(a) are not applicable to information related to an inmate who has been sentenced to death. Gov’t Code § 552.134(b)(2). You inform us that the inmate who is the subject of the request has been sentenced to death. We agree that the information before us is not subject to section 552.134(a). Accordingly, we will address your assertion that section 552.101 of the Government Code excepts the submitted information from required public disclosure.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” including information coming within the constitutional right of privacy. 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), and is not applicable here. 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 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*, 765 F.2d at 492).

In Open Records Decision No. 396 (1983), this office determined that although the financial records relating to inmate trust accounts were protected by privacy interests, information revealing the personal items purchased by the inmates from the commissary were generally not so protected and were subject to required public disclosure; that decision concluded only the identity of certain purchased products such as medications or publications may implicate an inmate’s privacy interests. After reviewing the information at issue, we conclude that none of the listed inmate property concerns the “most intimate aspects of human affairs” so as to implicate the inmate’s constitutional right of privacy. For similar reasons, we also conclude that the submitted information is not protected under common-law privacy. See *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977) (common law privacy protects highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and are not of legitimate concern to the public). The department therefore must release the requested information in its entirety.

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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/RWP/sdk

Ref: ID# 170764

Enc: Submitted documents

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