



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

August 18, 2003

Mr. James M Frazier III
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342

OR2003-5748

Dear Mr. Frazier:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 186121.

The Texas Department of Criminal Justice ("TDCJ") received a request for investigation file number SC.15.0453.03.TE. You claim that the requested information is excepted from disclosure under sections 552.101, 552.117, and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Section 552.134 of the Government Code provides in pertinent part:

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

¹ Although you also raise section 552.108, you do not submit arguments in support of a claim under section 552.108. Therefore, you have waived any claim of exception from disclosure under this section of the Government Code. *See* Gov't Code §§ 552.301, .302; Open Records Decision Nos. 586 (1991) (governmental body may waive predecessor to section 552.108).

Gov't Code, § 552.134(a). You assert that the information concerns an inmate confined in a TDCJ facility. Based upon our review of the documents however, we find that the information does not concern a TDCJ inmate, but rather a TDCJ employee. Thus, we conclude that section 552.134 is inapplicable to the submitted information.

You also claim that some of the submitted information may be excepted from disclosure under section 552.117 of the Government Code. Section 552.117(a)(3) requires that TDCJ withhold the home address and telephone number, social security number, and family member information of TDCJ employees. However, under section 552.023 of the Government Code a person or a person's authorized representative has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests. Therefore, the requestor has a special right of access to this information, and it must be released in this instance.²

We next note that section 552.130 of the Government Code excepts from public disclosure information relating to a driver's license or motor vehicle title or registration issued by an agency of this state.³ Thus, we have marked the information in the submitted documents that TDCJ must withhold pursuant to section 552.130.

Finally, we observe that the submitted documents contain information that is excepted from public disclosure under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses the doctrine of constitutional 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

²We emphasize, however, that if TDCJ receives another request for information that relates to the requestor, and the person that requests the information does not have a special right of access to it under section 552.023 of the Government Code, TDCJ should resubmit the information to this office and request another ruling.

³The Office of the Attorney General will raise mandatory exceptions like sections 552.101 and 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 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)). In Open Records Decision No. 430 (1985), our office determined that the list of inmate visitors is protected by constitutional privacy. In this instance, we find that some of the records pertaining to inmate visitors are confidential under constitutional privacy and must be withheld under section 552.101. We have marked these records accordingly. However, in the present case, a portion of the information at issue is the identities of inmate visitors who are implicated in the requested investigation of a TDCJ employee. We find that this information is of legitimate concern to the public, and we must balance that need against the privacy interest. *In re Crawford*, 194 F.3d 954, 959 (9th Cir. 1999) (in weighing competing interests to determine whether governmental body may disclose private information, court considers whether there is "an express statutory mandate, articulated public policy, or other recognizable public interest militating toward access"). We find that the legitimate public interest in this information outweighs any privacy interest, and conclude that the department may not withhold the identities of inmate visitors who are implicated in the requested investigation of a TDCJ employee under constitutional privacy. *See* Open Records Decision Nos. 329 at 2 (1982) (information relating to complaints against public employees and discipline resulting therefrom not protected under former section 552.101 or 552.102), 208 at 2 (1978) (information relating to complaint against public employee and disposition of complaint not protected under either the constitutional or common-law right of privacy).

In summary, we have marked the information in the submitted documents that TDCJ must withhold pursuant to section 552.130. We have marked the information that must be

withheld under section 552.101 in conjunction with constitutional privacy. The remaining submitted information must be released to the requestor.

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 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 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 186121

Enc. Submitted documents

c: Ms. Maryanne Denner
406 20th Street
Hondo, Texas 78861
(w/o enclosures)