



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 7, 2006

Ms. Ashley D. Fourt
Assistant District Attorney
Tarrant County - Justice Center
401 W. Belknap
Fort Worth, Texas 76196-0201

OR2006-10384

Dear Ms. Fourt:

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# 263246.

The Tarrant County Sheriff's Department (the "department") received a request for the visitor log of a particular inmate in the Tarrant County Jail. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 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)). 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. 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.*; *see also Fado v. Coon*, 633 F.2d 1172, 1176 (5th Cir. 1981). The second interest is the interest in avoiding disclosure of personal matters. *Ramie*, 765 F.2d at 492.

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*, 633 F.2d at 1176). 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).

This office has applied constitutional 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. 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 identity of individuals who had corresponded with inmates. The right of those individuals to anonymity was found to outweigh the public’s interest in this information. *Id.*; *see* Open Records Decision No. 430 (list of inmate visitors protected by constitutional privacy of both inmate and visitors). In the present case, the submitted information consists of an inmate visitor log file and various visitor passes of a department inmate; this information identifies the visitors and family members of the inmate. Thus, the submitted information is confidential under constitutional privacy and must be withheld 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the

Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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,



Alix K. Cornett
Assistant Attorney General
Open Records Division

AKC/krl

Ref: ID# 263246

Enc. Submitted documents

c: Ms. Debra Dennis
Dallas Morning News
c/o Ms. Ashley D. Fourt
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(w/o enclosures)