



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 18, 2006

Ms. Carla M. Cordova
Assistant General Counsel
Office of the General Counsel
Texas Department of Criminal Justice
P. O. Box 4004
Huntsville, Texas 77342-4004

OR2006-12244

Dear Ms. Cordova:

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# 262484.

The Texas Department of Criminal Justice ("TDCJ") received a request for information concerning a specified vehicle "that visited with an Offender at the Trustee camp on August 5, 2006." You claim that the requested information is excepted from disclosure under sections 552.101 and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first address your argument under section 552.134 of the Government Code, which provides in relevant 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.

Gov't Code § 552.134. The submitted information pertains to an automobile accident on the parking lot of a TDCJ facility. The accident did not involve any inmate confined in a TDCJ facility. Thus, upon review of the submitted information, we conclude that section 552.134 is not applicable in this instance.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information protected by the constitutional right to privacy. Constitutional privacy protects two kinds of interests. See Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987); see also *Whalen v. Roe*, 429 U.S. 589, 599-600 (1977). The first is the interest in independence in making certain important decisions related to the “zones of privacy,” pertaining to marriage, procreation, contraception, family relationships, and child rearing and education, that have been recognized by the United States Supreme Court. See Open Records Decision No. 455 at 3-7 (1987); see also *Fadjo v. Coon*, 633 F.2d 1172 (5th Cir. 1981). The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. See Open Records Decision No. 455 at 6-7 (1987); see also *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985), *reh’g denied*, 770 F.2d 1081 (1985), cert. denied, 474 U.S. 1062 (1986). This type of constitutional privacy requires a balancing between the individual’s privacy interests and the public’s need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common law doctrine of privacy; the information must concern the “most intimate aspects of human affairs.” *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). In Open Records Decision No. 430 (1985), our office determined that a list of inmate visitors is protected by constitutional privacy because people have a First Amendment right to correspond with inmates, and that right would be threatened if their names were released. See also Open Records Decision Nos. 428 (1985), 185 (1978) (public’s right to obtain an inmate’s correspondence list is not sufficient to overcome the first amendment right of the inmate’s correspondents to maintain communication with him free of the threat of public exposure). In this instance, we find that the information that identifies an inmate visitor is confidential under section 552.101 in conjunction with constitutional privacy. We note that the requestor has a right of access to a portion of the visitation records under section 552.023 of the Government Code.¹ We have marked the submitted information that must be withheld under section 552.101 and constitutional privacy.

We note that the submitted information contains license plate numbers. Section 552.130 of the Government Code excepts from disclosure information that “relates to . . . a motor vehicle title or registration issued by an agency of this state.” Gov’t Code § 552.130. The requestor appears to have access under section 552.023 of the Government Code to one of the license plate numbers. Therefore, it may not be withheld under section 552.130. We have marked one license plate number that is potentially excepted by section 552.130. We note that section 552.130 does not apply to out-of-state motor vehicle record information. Therefore, to the extent the license plate number we have marked was issued by an agency of the State of Texas, TDCJ must withhold such information pursuant to section 552.130. However, to the extent the marked license plate number was not issued by an agency of the

¹Government Code section 552.023(a) states that a person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and is protected from public disclosure by laws intended to protect that person’s privacy interests.

State of Texas, this information may not be withheld under section 552.130 and must be released.

In summary, you must withhold the information that identifies an inmate visitor, which we have marked under section 552.101 of the Government Code and constitutional privacy. To the extent the license plate number we have marked was issued by an agency of the State of Texas, you must withhold it under section 552.130 of the Government Code. The remaining information must be released to the requestor.²

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); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

²We note that the records to be released contain information relating to the requestor that would be excepted from disclosure to the general public under laws and exceptions designed to protect privacy. However, as the subject of this information, the requestor has a special right of access to it. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles). Therefore, if TDCJ receives a future request for this information from an individual other than the requestor or her authorized representative, TDCJ should again seek our decision.

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. 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,



Jennifer E. Berry
Assistant Attorney General
Open Records Division

JEB/dh

Ref: ID# 262484

Enc: Submitted documents

c: Ms. Valerie German
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(w/o enclosures)