



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 23, 2009

Ms. Katie Lentz
Open Records
Williamson County Sheriff's Office
508 South Rock Street
Georgetown, Texas 78626

OR2009-13396

Dear Ms. Lentz:

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# 356258.

The Williamson County Sheriff's Office (the "sheriff") received a request for all jail records pertaining to the requestor's client. You claim the submitted inmate visitor list information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Initially, we must address the sheriff's procedural obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(a), (b). In this instance, you state the sheriff received the request for information on July 1, 2009. However, you did not request a ruling from this office until July 20, 2009. Consequently, we find the sheriff failed to comply with the requirements of section 552.301 in requesting this decision from our office.

¹To the extent any additional responsive information existed on the date the sheriff received this request, we assume you have released it. If you have not released any such records, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because sections 552.101 and 552.130 can provide compelling reasons to withhold information, we will consider the applicability of these exceptions to 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." Gov't Code § 552.101. This section encompasses the constitutional right to privacy, which protects two kinds of interests. *See Whalen v. Roe*, 429 U.S.589, 599-600 (1977); *see also* Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987). 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 Fado v. Coon*, 633 F.2d 1172 (5th Cir. 1981); *see also* ORD 455 at 3-7. The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. *See Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir.1985); *see also* ORD 455 at 6-7. This aspect of constitutional privacy balances the individual's privacy interest against the public's interest in the information. *See* ORD 455 at 7. Constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs." *Id.* at 8 (quoting *Ramie*, 765 F.2d at 492).

This office has applied constitutional privacy to protect certain information related to 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. ORD 185 at 2. The information at issue in Open Records Decision No. 185 was the identities of individuals who had corresponded with inmates. In Open Records Decision No. 185, our office found that "the 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." *Id.* Implicit in this holding is the fact that an individual's association with an inmate may be intimate or embarrassing. In Open Records Decision

Nos. 428 and 430, our office determined that inmate visitor and mail logs that identify inmates and those who choose to visit or correspond with inmates are protected by constitutional privacy because people who correspond with inmates have a First Amendment right to do so that would be threatened if their names were released. ORD 430. Further, we recognized that inmates had a constitutional right to visit with outsiders and could also be threatened if their names were released. ORD 428 at 4; *see generally* ORD 185. The rights of those individuals to anonymity was found to outweigh the public's interest in this information. ORD 185; *see* ORD 430 (list of inmate visitors protected by constitutional privacy of both inmate and visitors).

The requestor, in this instance, is the inmate's authorized representative. Section 552.023(a) of the Government Code 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. Gov't Code § 552.023(a). Thus, pursuant to section 552.023, the requestor has a special right of access to information concerning his client. *See id.* Although the requestor's special right of access generally encompasses private information relating to his client, his client's visitors also have privacy rights with respect to their visitation with an inmate. Thus, because the constitutional rights of these visitors are implicated, the requestor's special right of access does not generally extend to information pertaining to his client's visitors. *See* ORD 430. We note, however, that one of the listed visitors is the inmate's minor child. In this instance, the requestor has a right of access to his client's child's information that would ordinarily be withheld on the basis of the child's privacy interests. *See* Gov't Code § 552.023(a). In the remaining information, we have marked the visitor information that is generally protected by constitutional privacy. We note some of the inmate's visitors listed in the marked information are his relatives. If the sheriff receives consent from these relatives to release their information to the requestor, then that information may not be withheld from this requestor. *See id.* § 552.023(a). The remaining marked visitor information must be withheld under section 552.101 of the Government Code on the basis of constitutional privacy. If the sheriff does not receive consent from the inmate's relatives, all of the marked visitor information must be withheld under section 552.101 of the Government Code in conjunction with constitutional privacy.²

You assert a portion of the submitted property recipient form is excepted under section 552.130 of the Government Code, which provides that information relating to a motor vehicle operator's or driver's license issued by a Texas agency is excepted from public release. *Id.* § 552.130(a)(1), (2). You have marked Texas driver's license information in the property recipient form that is generally protected by section 552.130. We note, however, section 552.130 protects privacy interests. In this instance, the marked driver's license information belongs to the inmate's wife. If the sheriff receives consent from the inmate's wife to release her information, then the information at issue may not be withheld from this

²As our ruling under constitutional privacy is dispositive, we need not address your remaining argument against disclosure under section 552.130 for portions of this information.

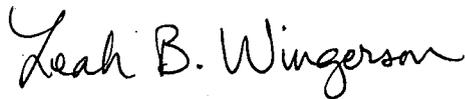
requestor under section 552.130 of the Government Code. *See id.* § 552.023(a). If the sheriff does not receive consent from the inmate's wife, the marked driver's license information must be withheld under section 552.130 of the Government Code.

In summary, if the sheriff receives proper consent, the marked information pertaining to the inmate's relatives may not be withheld under constitutional privacy, but the remaining marked visitor information must be withheld under section 552.101 of the Government Code in conjunction with constitutional privacy. If the sheriff does not receive consent from the inmate's relatives, all of the marked visitor information must be withheld under section 552.101 of the Government Code in conjunction with constitutional privacy. If the sheriff receives consent from the inmate's wife, her marked driver's license information may not be withheld under section 552.130 of the Government Code. If the sheriff does not receive consent from the inmate's wife, the marked Texas driver's license information must be withheld under section 552.130 of the Government Code. The remaining information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 356258

Enc. Submitted documents

c: Requestor
(w/o enclosures)