



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 25, 2010

Ms. Amanda Navarette  
Assistant County Attorney  
Ector County Attorney  
300 North Grant, Room 201  
Odessa, Texas 79761

OR2010-16153

Dear Ms. Navarette:

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# 398141.

The Ector County Sheriff's Office and the Ector County Attorney (collectively, the "county") received a request for the recording of a named county jail inmate's jail visit with the requestor. You claim 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." 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 *Fadjo 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 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 those individuals who correspond with inmates possess a "first amendment right . . . to maintain communication with [the inmate] free of the threat of public exposure." This office ruled this right would be violated by the release of information that identifies those correspondents because such a release would discourage correspondence. See ORD 185. The information at issue in this ruling 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 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 inmates had a constitutional right to visit with outsiders and could also be threatened if their names were released. See ORDs 428, 430. The rights of those individuals to anonymity were found to outweigh the public's interest in this information. *Id.*; see ORD 430 (list of inmate visitors protected by constitutional privacy of both inmate and visitors). We note although the requestor is the visitor in the submitted audio recording, the requestor does not have a right of access to the submitted recording under section 552.023 of the Government Code because the constitutional rights of the inmate are also implicated.<sup>1</sup> See ORD 430. Accordingly, the county must withhold the submitted recording under section 552.101 of the Government Code in conjunction with constitutional privacy.

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](http://www.oag.state.tx.us/open/index_orl.php),

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<sup>1</sup>Section 552.023(a) of the Government Code states 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).

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,

A handwritten signature in cursive script, appearing to read "Amy Shipp".

Amy L.S. Shipp  
Assistant Attorney General  
Open Records Division

ALS/tp

Ref: ID# 398141

Enc. Submitted documents

c: Requestor  
(w/o enclosures)