



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 8, 2013

Ms. Janice Childers
Records Clerk
Rusk County Sheriff's Office
210 Charleviox Street
Henderson, Texas 75652

OR2013-00466

Dear Ms. Childers:

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# 475684.

The Rusk County Sheriff's Office (the "sheriff's office") received a request for information related to a named defendant, including the defendant's demographics, jail visitation logs, "no contact" list, arrest report, bond date, and bond amount. You claim the submitted 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. We have also received and considered comments from the Texas Indigent Defense Commission (the "commission").¹ See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses information made confidential by other statutes, such as section 261.201(a) of the Family Code. Section 261.201(a) provides as follows:

¹We note H.B. 1754 created the Texas Indigent Defense Commission to develop policies and standards for indigent defense, and provides procedures for a county to establish managed assigned-counsel programs. Act of May 26, 2011, 82d Leg., R.S., ch. 984, § 1, 2011 Tex. Sess. Law Serv., 2460, 2460-66 (West) (to be codified at Tex. Gov't Code Ann. §§ 79.001-.039).

(a) [T]he following information is confidential, is not subject to public release under [the Act] and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Upon review, we agree most of the submitted information was used or developed in the sheriff's office's investigation of alleged or suspected child abuse under chapter 261 of the Family Code. *See id.* § 261.001(1) (defining "abuse" for purposes of Family Code chapter 261); *see also id.* § 101.003(a) (defining "child" for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). Therefore, this information, which we have marked, falls within the scope of section 261.201. You do not indicate the sheriff's office has adopted a rule that governs the release of the information in this instance; therefore, we assume that no such regulation exists. Given that assumption, we conclude the information we have marked is confidential under section 261.201(a). *See Open Records Decision No. 440 at 2 (1986) (predecessor statute)*. Accordingly, the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. We note the remaining information consists of jail visitation logs and a list of approved visitors. Upon review, we find the remaining information does not consist of either a report of alleged or suspected child abuse or neglect made under chapter 261 of the Family Code or information that was used or developed in an investigation under chapter 261. Accordingly, the sheriff's office may not withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.101 of the Government Code also encompasses the constitutional right to privacy. Constitutional privacy protects two kinds of interests. *See Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); *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 relating to the "zones of privacy" pertaining to marriage, procreation, contraception, family relationships, and child rearing and education the United States Supreme Court has recognized. *See Fado v. Coon*, 633 F.2d 1172 (5th Cir. 1981); *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); *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 5 (internal quotations omitted) (quoting *Ramie*, 765 F.2d at 492).

In Open Records Decision No. 430 (1985), our office determined a list of inmate visitors is protected by constitutional privacy because people have a First Amendment right to correspond with inmates, which would be threatened if their names were released. *See also* Open Records Decision Nos. 428 (1985) (logs of certain mail sent or received by inmates protected by constitutional privacy), 185 (1978) (public's right to obtain inmate's correspondence list not sufficient to overcome First Amendment right of inmate's correspondents to maintain communication with inmate free of threat of public exposure). Upon review, we find the sheriff's office must generally withhold the remaining information under section 552.101 of the Government Code in conjunction with constitutional privacy.

However, in this instance, the requestor states she is a representative of the commission. The commission argues the information at issue is being sought through the doctrine of intergovernmental transfer. This office has concluded information subject to the Act may be transferred between governmental bodies without waiving exceptions to the public disclosure of that information or affecting its confidentiality. *See* Attorney General Opinion JM-590 (1986); Open Records Decision Nos. 655 (1997), 567 (1990), 561 (1990), 516 (1989). These decisions are based on the well-settled policy of this state that governmental agencies should cooperate with each other in the interest of the efficient and economical administration of their statutory duties. *See* ORD 516. In adherence to this policy, this office has concluded information may be transferred between governmental bodies that are subject to the Act without waiving exceptions to the public disclosure of that information or affecting its confidentiality on the basis of a recognized need to maintain an unrestricted flow of information between governmental bodies. *See* Attorney General Opinions H-836 (1976), H-242 (1974), M-713 (1970); Open Records Decision Nos. 655, 414 (1984). However, the transfer of confidential information from one governmental body to another is prohibited where the relevant confidentiality statute authorizes release of the confidential information only to specific entities, and the requesting governmental body is not among the statute's enumerated entities. *See* Attorney General Opinions DM-353 at 4 n.6 (1995) (intergovernmental transfer permitted under statutory confidentiality provision only where disclosure to another governmental agency is required or authorized by law), JM-590 at 4-5 (1986) (where governmental body is not included among expressly enumerated entities to which confidential information may be disclosed, information may not be transferred to that governmental body).

Section 261.201 of the Family Code is a confidentiality statute with its own release provisions. Therefore, we conclude the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 may not be provided to the requestor through an intergovernmental transfer; it may be released only in accordance with the provisions of section 261.201 of the Family Code. Section 261.201(a) states, in part, information made confidential under this statute "may be disclosed only for purposes consistent with [the Family Code] and applicable federal or state law[.]" Fam. Code § 261.201(a). The requestor has not informed us, nor are we aware, of any applicable federal

or state law that would authorize the release of the information at issue to this requestor. Furthermore, the requestor has not explained how release of the information at issue to this requestor would be for purposes consistent with the Family Code. Consequently, the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

Constitutional privacy is not a confidentiality statute that enumerates specific entities to which release of the confidential information is enumerated. Thus, under the intergovernmental transfer doctrine, the sheriff's office has the discretion to release to the requestor the information subject to constitutional privacy. Furthermore, release of information pursuant to an intergovernmental transfer does not constitute a release of information to the public for the purposes of section 552.007 of the Act. *See, e.g.*, Attorney General Opinion Nos. H-917 at 1 (1976), H-242 (1974); *see also* Gov't Code §§ 552.007, .352. Thus, the sheriff's office does not waive its interests in withholding this information by exercising its discretion under the intergovernmental transfer doctrine.

In summary, the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The sheriff's office must generally withhold the remaining information under section 552.101 of the Government Code in conjunction with constitutional privacy. However, under the intergovernmental transfer doctrine, the sheriff's office has the discretion to release to the requestor the information subject to 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, 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,



Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/ag

Ref: ID#475684

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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