



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 26, 2015

Ms. Amy Monsivais  
Assistant County Attorney  
El Paso County Attorney's Office  
500 East San Antonio, Room 503  
El Paso, Texas 79901

OR2015-10196

Dear Ms. Monsivais:

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# 566474 (File No. 0082-15-PI).

The El Paso County Sheriff's Office (the "sheriff's office") received a request for the jail telephone call recordings of a named inmate of the El Paso County Detention Facility from a specified time period. 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.

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. Section 552.101 encompasses the doctrine of constitutional privacy, which consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy," which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second 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)).

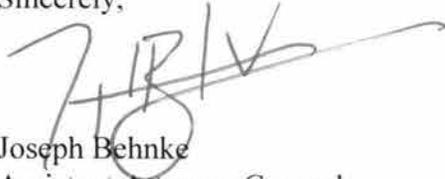
This office has applied constitutional privacy to protect certain information about incarcerated individuals. See Open Records Decision Nos. 430 (1985), 428 (1985), 185 (1978). Citing *State v. Ellefson*, 224 S.E.2d 666 (S.C. 1976) as authority, this office held that those individuals who correspond 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. ORD 185. The information at issue in Open Records Decision No. 185 was the identities of individuals who had corresponded with inmates, and 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 which identify inmates and those who choose to visit or correspond with inmates are protected by constitutional privacy because people who visit or correspond with inmates have a First Amendment right to do so that would be threatened if their names were released. See ORDs 428 and 430. The rights of those individuals to anonymity was found to outweigh the public's interest in this information. See ORDs 185, 428, 430. Further, we recognized inmates had a constitutional right to correspond and visit with outsiders, and that right could also be threatened if those individuals' names were released. See ORDs 428, 430 (list of inmate visitors protected by constitutional privacy of both inmate and visitors). We have determined the same principles apply to an inmate's recorded conversations from a telephone at a jail. You state the submitted information consists of audio recordings of the named inmate's telephone conversations. Thus, we find the sheriff's office must withhold the submitted information in its entirety 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Behnke', with a long horizontal flourish extending to the right.

Joseph Behnke  
Assistant Attorney General  
Open Records Division

JB/dls

Ref: ID# 566474

Enc. Submitted documents

c: Requestor  
(w/o enclosures)