KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 30, 2015

Ms. Donna L. Clarke
Assistant Criminal District Attorney
Lubbock County
P.O. Box 10536
Lubbock, Texas 79408

OR2015-27307

Dear Ms. Clarke:

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# 599369.

The Lubbock County Sheriff's Office (the "sheriff's office") received a request for three categories of information pertaining to a specified inmate. You state the sheriff's office has released some of the requested information. You state the sheriff's office does not have information pertaining to a portion of the request.[1] 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 "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

[1]We note the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

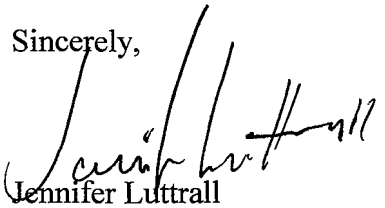
Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between 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 privacy to protect certain information about incarcerated individuals. *See* Open Records Decision Nos. 430 (1985), 428 (1985), 185 (1978). In Open Records Decision No. 185, the information at issue was the identities of individuals who had corresponded with inmates. In that decision, our office found "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." ORD 185 at 2 (citing *State v. Ellefson,* 224 S.E.2d 666 (S.C. 1976)). 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. ORDs 430, 428. Further, we recognized inmates had a constitutional right to visit with outsiders and could also be threatened if their names were released. *See id.*; *see also* ORD 185. The rights of those individuals to anonymity were found to outweigh the public's interest in this information. *See* ORD 185; *see also* ORD 430 (list of inmate visitors protected by constitutional privacy of both inmate and visitors). Although the requestor is the authorized representative for the inmate at issue, the requestor does not have a right of access to the submitted visitation information under section 552.023 of the Government Code because the constitutional rights of the other parties are also implicated. *See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to the person and is protected from public disclosure by laws intended to protect that person's privacy interests); *see also* ORD 430 (list of inmate visitors protected by constitutional privacy of both inmate and visitors). Accordingly, the sheriff's office must withhold the submitted information 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, 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/akg

Ref: ID# 599369

Enc. Submitted documents

c: Requestor
(w/o enclosures)