



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 27, 1995

Lieutenant Charles E. Cox  
Bell County Sheriff's Department  
P.O. Box 749  
Belton, Texas 76513

OR95-1291

Dear Lieutenant Cox:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 36294.

The Bell County Sheriff's Department (the "department") received a request for approximately twenty-five categories of documents relating to Jeffrey Allen Barnes. You state that the department has no objection to releasing some of the requested information to the requestor. However, you claim that a portion of the requested information is excepted from disclosure under section 552.101 of the Government Code and the informer's privilege and the Texas Family Code as applied through section 552.101 of the Government Code.<sup>1</sup>

The Open Records Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit the request and the exceptions claimed to the attorney general within ten days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. See Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. See, e.g.,

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<sup>1</sup>We note that the requestor is the mother of an incarcerated individual, who also has a power of attorney for this incarcerated individual. As the department has asked this office for a decision, we need not consider the applicability of section 552.027 of the Government Code to this request.

Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

It appears that the department received the request for information on September 22, 1995. However, the department did not request an opinion from this office until October 5, 1995. Therefore, the department did not comply with the statutorily-mandated deadline in section 552.301 of the Government Code. In the absence of a demonstration that the information is confidential by law or that other compelling reasons exist as to why the information should not be made public, you must release the information. Open Records Decision No. 195 (1978).<sup>2</sup>

We note that although you raised exceptions to certain categories of documents, specifically, "A2," "A3," "A4," "B6," "B7," and "C6," you did not submit documents responsive to those categories to this office for review. Responsive documents or representative samples of responsive documents are required because "[i]n order to determine whether information is subject to a particular exception, this office ordinarily must review the information." Open Records Decision No. 497 (1988) at 4. Without the documents, we cannot rule on your claimed exceptions. Consequently, we find that you have not met your burden under sections 552.301 through 552.303 of the Government Code and that the information is presumed to be public. Open Records Decision No. 195 (1978). In the absence of a demonstration that the information is confidential by law or that other compelling reasons exist as to why the information should not be made public, you must release the information. *Id.*; see also Gov't Code § 552.352 (the distribution of confidential information is a criminal offense). We are enclosing for your information a list of the type of information that is confidential.

You claim that certain of the requested information is confidential by another source of law or affects third-party interests. These would be compelling reasons for withholding certain of the requested documents. We will therefore address your arguments as to the documents submitted for our review.

You contend that two categories of documents, the inmate's visitors logs and mail logs, which you have marked as "D1" and "D5," are protected by a constitutional right of privacy. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses the constitutional right to privacy, which protects two interests. Open

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<sup>2</sup>We note that in response to one request, which you have labeled "D4," you have stated that it is too broad to answer. We note that pursuant to section 552.222(b) of the Government Code, recently added by the legislature, a governmental body may ask the requestor to clarify the request if what information is requested is unclear. Additionally, if a large amount of information has been requested, a governmental body may discuss with the requestor how the scope of the request may be narrowed. Act of May 29, 1995, 74th Leg., R.S., ch. 1035, § 15, 1995 Tex. Sess. Law Serv. 5127, 5134 (Vernon) (to be codified as section 552.222 of Government Code).

Records Decision No. 600 (1992) at 4 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)). The first is the interest in independence in making certain important decisions related to the "zones of privacy" recognized by the United States Supreme Court. Open Records Decision No. 600 (1992). The zones of privacy recognized by the United States Supreme Court are matters pertaining to marriage, procreation, contraception, family relationships, and child rearing and education. *See id.*

The second interest is the interest in avoiding disclosure of personal matters. The test for whether information may be publicly disclosed without violating constitutional privacy rights involves a balancing of the individual's privacy interests against the public's need to know information of public concern. *See Open Records Decision No. 455 (1987) at 5-7 (citing Fado v. Coon, 633 F.2d 1172, 1176 (5th Cir. 1981)).* The scope of information considered private under the constitutional doctrine is far narrower than that under the common law; the material must concern the "most intimate aspects of human affairs." *See Open Records Decision No. 455 (1987) at 5 (citing Ramie v. City of Hedwig Village, 765 F.2d 490, 492 (5th Cir. 1985), cert. denied, 474 U.S. 1062 (1986)).*

This office has previously held that an inmate's qualified constitutional right to privacy requires that mail logs and visitors logs be withheld from public disclosure. Open Records Decision Nos. 430 (1985) (visitors logs), 428 (1985) (mail logs), 185 (1978) (mail logs). However, a person's authorized representative has a special right of access to information relating to the person that is protected from public disclosure by laws intended to protect that person's privacy interests. Gov't Code § 552.023(a). In this case, the requestor has a power of attorney from the person about whom the information is requested. Therefore, the department may not withhold the requested visitors logs from this requestor. The department may also not withhold the requested mail logs to the extent that they reflect information concerning Mr. Barnes. The mail logs submitted to us for review contain information about other inmates. The department must withhold that information under those inmates' constitutional right to privacy.<sup>3</sup>

You next claim that the informer's privilege as applied through section 552.101 of the Government Code excepts certain incident reports from required public disclosure. The Texas courts have recognized the informer's privilege. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). It protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 (1988) at 3, 208 (1978) at 1-2. The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those

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<sup>3</sup>If the department receives another request for this same information, we suggest that the department re-submit to this office the documents and the department's arguments as to why section 552.101 excepts the documents from disclosure. This office will consider those arguments at that time.

who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 (1981) at 2 (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. See Open Records Decision Nos. 582 (1990) at 2, 515 (1988) at 4-5. However, the informer's privilege is waivable by a governmental body. Open Records Decision No. 549 (1990). As the department failed to request an opinion from this office within the ten days provided by section 552.301 of the Government Code, we conclude that the department has waived this exception and may not withhold the documents labeled as "D2" from required public disclosure.

You next claim that the documents you have labeled as "A1," "A5," and "A6" are excepted from disclosure by the Family Code as applied through section 552.101 of the Government Code. Section 552.101 encompasses information made confidential by other statutes. These three categories of requested documents relate to the sexual assault of a juvenile. Section 261.201(a) of the Family Code provides:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, 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;

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

Act of May 25, 1995, 74th Leg., R.S., ch. 751, § 93, 1995 Tex. Sess. Law Serv. 3888, 3924 (Vernon). The exceptions under section 261.201 provide for (1) the disclosure of records pursuant to a court order, (2) the disclosure of an investigation of an adopted child to the adoptive parents, prospective adoptive parents, or to the child upon reaching adulthood, and (3) the disclosure of an investigation of a child to the parent, managing conservator, or other legal representative of the child under certain conditions. It appears that none of these exceptions is applicable to the current request. Therefore, the records at issue are confidential pursuant to section 261.201 of the Family Code. See Open Records Decision No. 440 (1986) at 2 (applying former section 34.08 of the Family Code). Accordingly, the department must withhold these documents.

Section 552.101 of the act excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You assert that information

relating to a burglary charge is excepted from disclosure because the co-defendant is a juvenile.<sup>4</sup> Section 51.14 of the Family Code provides, in part:

Except as provided by Article 15.27, Code of Criminal Procedure, and except for files and records relating to a charge for which a child is transferred under Section 54.02 of this code to a criminal court for prosecution, the law-enforcement files and records [concerning a child] are not open to public inspection nor may their contents be disclosed to the public . . . .<sup>5</sup>

We have examined the information related to the burglary charge submitted to us for review. It appears that the records do not involve a charge for which the juvenile was transferred under section 54.02 of the Family Code. Additionally, none of the exceptions to section 51.14(d) apply here. We conclude that the documents the department wishes to withhold identify a juvenile or furnish a basis for a juvenile's identification and must therefore be withheld from required public disclosure under section 552.101 of the Government Code in conjunction with section 51.14(d) of the Family Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee  
Assistant Attorney General  
Open Records Division

SES/ch

Ref.: ID# 36294

Enclosures: Marked documents  
Confidentiality list

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<sup>4</sup>You also claim that this information is excepted from disclosure by section 552.103. However, you did not timely claim this exception. Gov't Code § 552.301. Therefore, the department has waived any exception under section 552.103.

<sup>5</sup>We note that new legislation will affect conduct that occurs on or after January 1, 1996. Act of May 27, 1995, 74th Leg., R.S., ch. 262, §§ 1, 106, 1995 Tex. Sess. Law Serv. 2517, 2591 (Vernon).

cc: Ms. Diana Taylor Yauger  
7508 Rendon  
New Hope Road  
Tarrant County  
(w/enclosure - Confidentiality list)