



October 20, 2000

Mr. Tim Cone
Criminal District Attorney
County of Upshur
405 North Titus Street
Gilmer, Texas 75644

OR2000-4085

Dear Mr. Cone:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 140560.

Upshur County (the "county") states that it received a request for a detailed summary of phone calls made from the Upshur County Jail. You explain that the phone calls from the jail to outside numbers are made through the Conversant Technologies, Inc. ("CTI") system. You state that the detailed summary of calls contains the date, duration, and time of the phone call as well as the number called. You ask whether the requested information is subject to the Public Information Act (the "Act") under section 552.002 of the Government Code and, alternatively, claim that the numbers called are excepted under section 552.101 of the Government Code. We have considered the submitted arguments and the exception you claim.

You state that the summary of phone calls are not maintained by the auditor or any governmental entity within the county but that the summaries are available from CTI, a private company, if requested by the county. The Act does not ordinarily require a governmental body to obtain information not in its possession. Open Records Decision Nos. 558 (1990), 499 (1988). Section 552.002 of the Government Code, however, defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." Thus, information that is collected, assembled, or maintained by a third party may be subject to disclosure under chapter 552 of the Government Code if a governmental body owns or has a right of access to the information. *See* Open Records Decision No. 462 (1987). *Cf.* Open Records Decision No. 499 (1988).

Pursuant to our request for additional information under section 552.303 of the Government Code, you have provided a copy of CTI's proposal for the county's inmate phone system and a copy of the commissioners' court minutes at which the proposal was accepted. You represent that the commissioners' court minutes and the proposal are the complete contract between the county and CTI. According to the proposal, CTI provides phone equipment and

services that allows inmates to place collect calls from the jail. The county does not pay CTI for services but rather receives a monthly percentage of the gross billable revenue from the collect calls. CTI retains the remaining revenue from the collect calls. With regard to the summary of phone calls, the proposal provides the following:

[CTI] will furnish to Upshur County each month, both detail and summary reports listing the following information:

Number of completed calls
Time, date, duration of call and number called
Summary Dollar volume generated
Upshur County's portion of the generated revenue

(emphasis added). Based on this provision in the proposal, we believe that the county has a right of access to the time, date, duration of call, and the number called. Therefore, we conclude that the requested information is collected, assembled, or maintained in connection with the transaction of official business for the county and the county has a right of access to the requested information. *See* Gov't Code § 552.002. Thus, the requested information is "public information" which is subject to the Act under section 552.002. Because you claim no exception for the date, duration or the time of the call, you must release this information to the requestor. *See* Gov't Code § 552.301(b) (providing that governmental body must state exceptions that apply to requested information). However, you claim that the numbers called are excepted under section 552.101 of the Government Code.

Pursuant to section 552.301(e)(1), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e)(1)(A)-(D). You did not, however, submit to this office the request for information or copies or representative samples of the specific information that was requested.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301(e) results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). You argue that the numbers called are excepted under section 552.101 of the Government Code. Section 552.101 of the Government Code provides a compelling reason to overcome the presumption of openness. *See* 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). Therefore, we will address the applicability of section 552.101.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses the right to privacy. The constitutional right to privacy protects two interests. Open Records Decision No. 600 at 4 (1992) (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 at 4 (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 at 5-7 (1987) (citing *Fadjo 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 at 5 (1987) (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)).

In Open Records Decision Nos. 428 (1985) and 430 (1985), we concluded that inmate visitor and mail logs which identify inmates and those who choose to visit or correspond with inmates are protected by constitutional law. Likewise, we agree that the phone numbers of individuals called by inmates are protected by constitutional law. Thus, the county must withhold the numbers called pursuant to section 552.101 of the Government Code.

In conclusion, we determine that the county has a right of access to the summary of phone calls as provided in CTI's proposal. Therefore, the summary of phone calls constitute "public information" under section 552.002. Because you have not raised any exceptions to disclosure for the time, date or duration of the call, you must release this information to the requestor. However, you must withhold the numbers called under section 552.101 and constitutional privacy.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the

governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

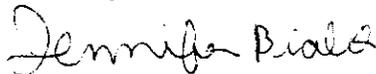
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB/er

Ref: ID# 140560

cc: Mr. John D. Clement
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