



August 21, 2001

Ms. Sarajane Milligan  
Assistant County Attorney  
Harris County  
1019 Congress, 15<sup>th</sup> Floor  
Houston, Texas 77002-1700

OR2001-3682

Dear Ms. Milligan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 152710.

The Harris County Sheriff's Office (the "sheriff's office") received a request for a named inmate's jail visitation records and medical or psychiatric records. You contend that the information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the information at issue.

First, you state that the requested medical information is the identical information that this office determined in Open Records Letter No. 2001-3291 (2001) was excepted from disclosure under section 552.108(a)(1) of the Government Code. Because the identical information was requested from the sheriff's office and the case is still pending, the sheriff's office may rely on Open Records Letter No. 2001-3291 as a previous determination and withhold the information under section 552.108(a)(1). Open Records Decision No. 673 (2001) (governmental body may rely on previous determination when 1) information at issue is precisely the same information; 2) governmental body is same governmental body that previously received ruling from the attorney general; 3) prior ruling concluded that the precise information is excepted from disclosure; and 4) the law, facts, and circumstances have not changed since the issuance of the ruling).

Next, you assert the visitation records are protected by the privacy doctrine. We first address the sheriff's office's contention that Open Records Decision No. 430 (1985) and two prior informal letter rulings are previous determinations regarding the release of jail visitation records. Open Records Decision No. 673 sets forth which attorney general decisions constitute previous determinations and makes clear that because the records at issue here are not precisely the same records addressed in the earlier decisions, the sheriff's office may not rely on those decisions as previous determinations. Open Records Decision No. 673 at 6 (2001). Furthermore, the prior decisions do not fall within the second type of previous determination discussed in Open Records Decision No. 673. *Id.* at 7 (decision may be relied upon as previous determination so long as elements of law, fact, and circumstances are met to support previous decision's conclusion, decision concludes that specific, clearly delineated category of information is or is not excepted from disclosure, and decision explicitly provides that, in response to future requests, governmental body is not required to seek decision from attorney general in order to withhold information). Thus, the sheriff's office may not rely on those prior decisions as previous determinations for the visitation records requested here.

Accordingly, we will address the merits of your arguments. 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)).

The visitation record is excepted from disclosure under section 552.101. 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. Thus, the sheriff's office must withhold the visitor records from disclosure pursuant to section 552.101 of the Government Code.

Because sections 552.101 and 552.108 are dispositive, we do not address your other claims. 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 Dep't 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 Hadassah Schloss at 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,

A handwritten signature in cursive script, appearing to read "Yen-Ha Le".

Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/seg

Ref: ID# 152710

Enc: Submitted documents

cc: Ms. Anne Belli Gesalman  
c/o Harris County  
(w/o enclosures)