



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 17, 2004

Ms. Jill Torbert
Assistant Criminal District Attorney
Bexar County
300 Dolorosa, Suite 4049
San Antonio, Texas 78205-3030

OR2004-2033

Dear Ms. Torbert:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 197727.

The Bexar County Sheriff's Office (the "sheriff") received a request for an inmate's visitor logs showing all visitors during a specified time period. You claim that 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.

As a preliminary matter, we note that a portion of the information at issue in the present request is subject to a previous determination of this office issued as Open Records Letter No. 2003-9254 (2003) on December 22, 2003. *See* Open Records Decision No. 673 (2001) (governmental body may rely on previous determination when 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D); 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Public Information Act (the "Act"); and 4) the law, facts, and circumstances on which the prior ruling was based have not changed since the issuance of the ruling). We determine that the present request arises under the same facts and circumstances at issue in Open Records Letter No. 2003-9254. Consequently, we determine that the sheriff must continue to follow our ruling in Open Records Letter No. 2003-9254 with respect to the information at issue in that ruling, and we only address the additional requested information in the present ruling.

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 constitutional right to privacy, which 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)).

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. We have reviewed the information and conclude that the sheriff must withhold the visitor logs from disclosure pursuant to section 552.101 of the Government Code.

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 Pub. 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Amy D. Peterson
Assistant Attorney General
Open Records Division

ADP/sdk

Ref: ID# 197727

Enc. Submitted documents

c: Mr. Mark Braswell
9902 Omena Court
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(w/o enclosures)