



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 4, 2005

Mr. Robert Underwood
P. O. Box 1138
Carthage, Texas 75633-1138

OR2005-08987

Dear Mr. Underwood:

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# 233509.

The Panola County Sheriff's Office (the "sheriff's office") received a request for information relating to telephone calls at the Panola County jail on May 21, 2005 and June 18, 2005. You state you have redacted social security numbers from the requested information. *See* Gov't Code § 552.147¹ (authorizing governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act). You claim that the telephone numbers inmates called at booking, as well as recorded conversations from a telephone at the jail, are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We begin by addressing the sheriff office's obligations under the Act. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general 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

¹Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, § 1, sec. 552.147(a) (to be codified at Tex. Gov't Code § 552.147).

exceptions apply to which parts of the documents. You did not, however, submit to this office a copy of the written request for information.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See 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). Generally, a compelling reason exists when third party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Because section 552.101 is a mandatory exception and constitutes a compelling reason that overcomes the presumption of openness caused by a failure to comply with section 552.301, we will address your arguments. *See Gov't Code §§ 552.007, .352*; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by the constitutional right to privacy. Constitutional privacy protects two kinds of interests. *See Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987)*; *see also Whalen v. Roe*, 429 U.S. 589, 599-600 (1977). The first is the interest in independence in making certain important decisions related to the "zones of privacy," pertaining to marriage, procreation, contraception, family relationships, and child rearing and education, that have been recognized by the United States Supreme Court. *See Open Records Decision No. 455 at 3-7 (1987)*; *see also Fado v. Coon*, 633 F.2d 1172 (5th Cir. 1981).

The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. *See Open Records Decision No. 455 at 6-7 (1987)*; *see also Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985), *reh'g denied*, 770 F.2d 1081 (1985), cert. denied, 474 U.S. 1062 (1986). This 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)).

In Open Records Decision No. 430 (1985), our office determined that a list of inmate visitors is protected by constitutional privacy because people have a First Amendment right to correspond with inmates, and that right would be threatened if their names were released. *See also Open Records Decision Nos. 428 (1985), 185 (1978)* (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 inmate free of the threat of public exposure). You argue the same principles apply to telephone numbers called by inmates during booking as well as recorded conversations from a telephone at the jail. Upon review, we agree these telephone numbers and most of the submitted recordings pertain to inmates' correspondents and visitors. However, some of the recordings pertain to other matters involving the sheriff's office, specifically the May 21 recordings at 1:59:02 a.m., 2:50:10 a.m., 2:51:07 a.m., 2:51:41 a.m., 9:25:31 a.m., 11:41:46 a.m., 11:42:46 a.m., 11:43:24 a.m., and 3:45:56 p.m., and the June 18 recordings at 10:18:06 a.m., 5:51:58 p.m., and 5:52:03 p.m. These recordings are not protected by constitutional privacy and may not be withheld under section 552.101. The telephone numbers and remaining recordings are protected by constitutional privacy and must be withheld under section 552.101.

We note the remaining submitted information includes Texas motor vehicle record information. Section 552.130 of the Government Code excepts from disclosure information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state."² Gov't Code § 552.130. In accordance with section 552.130 of the Government Code, the sheriff must withhold the marked Texas motor vehicle record information. *See* Gov't Code § 552.130.

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, upon receiving this ruling, the governmental body

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

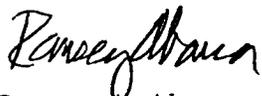
will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to 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 Office of the Attorney General 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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/krl

Ref: ID# 233509

Enc. Submitted documents

c: Mr. Michael Dixon
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(w/o enclosures)