



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 27, 2008

Ms. Josefina J. Brostrom  
Assistant County Attorney  
El Paso County  
500 East San Antonio, Room 503  
El Paso, Texas 79901

OR2008-02662

Dear Ms. Brostrom:

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# 303385.

The El Paso County Sheriff's Office (the "sheriff") received a request for a list of the date, time, duration, and telephone number for all telephone calls made or received by a named inmate at the El Paso Jail and El Paso Jail Annex from October 11, 2006 through January 14, 2007. You state that you have released information pertaining to the date, time, and duration of the telephone calls. However, you argue that the requested telephone numbers are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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. Section 552.101 encompasses the doctrine of constitutional privacy. The constitutional right to privacy protects two types of interests. *See* Open Records Decision No. 600 at 4 (1992) (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985)). 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. *Id.* 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 right to privacy; the material must concern the "most intimate aspects of human affairs." See *id.* at 5 (citing *Ramie v. City of Hedwig Village*, 765 F.2d at 492).

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). We have determined that the same principles apply to telephone numbers called by inmates during booking as well as recorded conversations from a telephone at the jail. We note that although the inmate has given written authorization for the requestor to access this information, the requestor does not have a right of access to this information under section 552.023 of the Government Code because the constitutional rights of the other parties to the telephone conversations are also implicated.<sup>1</sup> See ORD 430. Thus, we agree that the telephone numbers are protected by constitutional privacy and must be withheld under section 552.101 of the Government Code.

You ask that this ruling serve as a previous determination that would permit the sheriff to withhold telephone numbers called by inmates without the necessity of again requesting a decision under the Act. We decline to issue a previous determination at this time. Accordingly, this letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us, and must not be relied upon as a previous determination regarding any other records or any other circumstances.

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

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<sup>1</sup> Government Code section 552.023(a) states that a person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and is protected from public disclosure by laws intended to protect that person's privacy interests. Gov't Code § 552.023(a).

governmental body wants to challenge this ruling, the governmental body must file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 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 challenge 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,



Chanita Chantaplin-McLelland  
Assistant Attorney General  
Open Records Division

CC/mcf

Ref: ID# 303385

Enc. Submitted documents

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