



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 22, 2009

Ms. Susan Camp-Lee  
Sheets & Crossfield, P.C.  
309 East Main Street  
Round Rock, Texas 78664-5246

OR2009-05361

Dear Ms. Camp-Lee:

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# 340549.

The City of Round Rock (the "city"), which you represent, received a request for the requestor's complete personnel file. You state the city has provided most of the requested information to the requestor. You claim the submitted inmate criminal history report, visitor log, telephone log, and profile 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. This section encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety ("DPS") maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency

to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Similarly, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Accordingly, the city must withhold the criminal history report submitted as Exhibit B and the information we have marked in Exhibit D under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code.<sup>1</sup>

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Although you claim the remaining information in Exhibit D is protected by common-law privacy, you have failed to provide any arguments explaining how this information constitutes highly intimate or embarrassing information. Therefore, none of the remaining information in Exhibit D may be withheld on the basis of common-law privacy. As you have claimed no other exceptions to disclosure for this information, it must be released.

You claim the inmate visitor and telephone logs submitted as Exhibit C are protected by constitutional privacy. The constitutional right to privacy is also encompassed by section 552.101. Constitutional privacy protects two kinds of interests. *See Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987). 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 Fado v. Coon*, 633 F.2d 1172 (5th Cir. 1981); ORD 455 at 3-7. The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. *See Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985); ORD 455 at 6-7. This aspect of constitutional privacy balances the individual's privacy interest against the public's interest in the information. *See* ORD 455 at 7. Constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs." *Id.* at 8 (quoting *Ramie*, 765 F.2d at 492).

This office has applied privacy to protect certain information about incarcerated individuals. *See* Open Records Decision Nos. 430 (1985), 428 (1985), 185 (1978). Citing *State v. Ellefson*, 224 S.E.2d 666 (S.C. 1976) as authority, this office held those individuals who correspond with inmates possess a "first amendment right . . . to maintain communication

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<sup>1</sup>As our ruling is dispositive for this information, we need not address your remaining argument against disclosure of this information.

with [the inmate] free of the threat of public exposure,” and this right would be violated by the release of information that identifies those correspondents, because such a release would discourage correspondence. ORD 185. The information at issue in Open Records Decision No. 185 was the identities of individuals who had corresponded with inmates. Our office found “the 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 him free of the threat of public exposure.” *Id.* Implicit in this holding is the fact an individual’s association with an inmate may be intimate or embarrassing. In Open Records Decision Nos. 428 and 430, our office determined inmate visitor and mail logs that identify inmates and those who choose to visit or correspond with inmates are protected by constitutional privacy because people who correspond with inmates have a First Amendment right to do so that would be threatened if their names were released. ORD 430. The rights of those individuals to anonymity was found to outweigh the public’s interest in this information. *Id.*; see ORD 430 (list of inmate visitors protected by constitutional privacy of both inmate and visitors). In this instance, we find most of the entries identifying visitors and correspondents of the inmate must be withheld under section 552.101 of the Government Code in conjunction with constitutional privacy.<sup>2</sup>

We note the remaining entries in Exhibit C pertain to the requestor. This information may not be withheld from the requestor based on her own privacy interests. See Gov’t Code § 552.023(a) (person or person’s authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person’s privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide her with information concerning herself). However, this office has determined inmates also have a constitutional privacy interest in the identities of people with whom they correspond. See ORD 428. As noted previously, that privacy interest is based on balancing the individual’s privacy interest against the public’s interest in the information. See ORD 455 at 7. The inmate visitor logs at issue are contained in the requestor’s employment file and were presumably used for personnel-related purposes. This office has found the public has a strong interest in information related to the job performances of public employees and the conditions for their continued employment. *Cf.* Open Records Decision Nos. 470 at 4 (1987), 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees). Thus, in this instance, we find the inmate’s privacy interest is outweighed by the public’s interest in the information pertaining to the requestor’s employment with the city. Consequently, the entries in the submitted visitor logs pertaining to the requestor, which we have marked, may not be withheld on the basis of the constitutional right to privacy. As you have claimed no other exceptions to disclosure for this information, it must be released.

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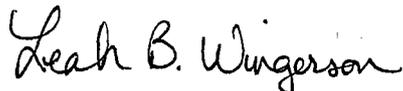
<sup>2</sup>As our ruling is dispositive for this information, we need not address your remaining argument against disclosure of this information.

In summary, the city must withhold Exhibit B and the marked information in Exhibit D under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code. Except for the information marked for release, the city must withhold Exhibit C under section 552.101 of the Government Code in conjunction with constitutional privacy. The remaining information must be released.<sup>3</sup>

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/dls

Ref: ID# 340549

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>The remaining information contains the requestor's home address. Because this information may be confidential with respect to the general public, if the city receives another request for this particular information from a different requestor, the city should again seek a decision from this office. Also, the remaining information contains a social security number that does not belong to the requestor. Section 552.147(b) of the Government Code authorizes a 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.