



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 25, 2012

Ms. Ashley D. Fourt  
Assistant District Attorney  
Tarrant County Criminal District Attorney's Office  
401 West Belknap  
Fort Worth, Texas 76196-0201

OR2012-01237

Dear Ms. Fourt:

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# 444203.

The Tarrant County Sheriff's Office (the "sheriff") received a request for visitation records involving an inmate of the county jail and a named attorney. You contend the sheriff may decline to comply with this request for information pursuant to section 552.028 of the Government Code. You also claim the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and reviewed the information you submitted.

Section 552.028 of the Government Code provides in part:

- (a) A governmental body is not required to accept or comply with a request for information from:
- (1) an individual who is imprisoned or confined in a correctional facility; or
  - (2) an agent of that individual, other than that individual's attorney when the attorney is requesting information that is subject to disclosure under [the Act].

(b) This section does not prohibit a governmental body from disclosing to an individual described by Subsection (a)(1), or that individual's agent, information held by the governmental body pertaining to that individual.

Gov't Code § 552.028(a)-(b). You believe the requestor is an agent of the inmate who is the subject of this request for information. Although the requestor states he does not make the request as the inmate's agent, you note the requestor is not an attorney and "is obviously related to the inmate as they share the same last name." Having considered your arguments, we conclude you have not established that the requestor is, in fact, acting as the inmate's agent. We therefore conclude section 552.028 of the Government Code does not permit the sheriff to decline to comply with this request.

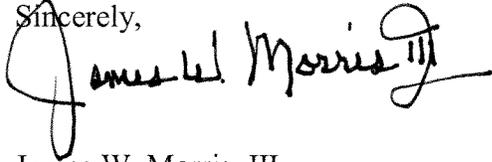
Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. You claim section 552.101 in conjunction with constitutional privacy, which protects two kinds of interests. *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 relating to the "zones of privacy" pertaining to marriage, procreation, contraception, family relationships, and child rearing and education the United States Supreme Court has recognized. *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 id.* 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). In Open Records Decision No. 430 (1985), this office determined a list of inmate visitors is protected by constitutional privacy because people have a First Amendment right to correspond with inmates, which would be threatened if their names were released. *See also* Open Records Decision Nos. 428 (1985) (logs of certain mail sent or received by inmates protected by constitutional privacy), 185 (1978) (public's right to obtain inmate's correspondence list not sufficient to overcome First Amendment right of inmate's correspondents to maintain communication with inmate free of threat of public exposure). We therefore agree the sheriff must withhold the submitted jail visitation records under section 552.101 of the Government Code in conjunction with constitutional privacy.

In summary, section 552.028 of the Government Code does not permit the sheriff to decline to comply with this request for information, but the sheriff must withhold the submitted information under section 552.101 of the Government Code in conjunction with constitutional privacy.

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, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "James W. Morris, III". The signature is written in a cursive style with a large initial "J" and a stylized "M".

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/em

Ref: ID# 444203

Enc: Submitted documents

c: Requestor  
(w/o enclosures)