



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 26, 2014

Ms. Donna L. Clarke
Assistant Criminal District Attorney
Civil Division
Lubbock County
P.O. Box 10536
Lubbock, Texas 79408-3536

OR2014-05073

Dear Ms. Clarke:

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# 517872.

The Lubbock County Sheriff's Office (the "sheriff's office") received a request for visitation logs relating to twenty-six named inmates during a specified time period which pertain to visits by a named individual, including the date of the visit, the duration of the visit, or the refusal of the visit. You claim that the requested 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. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note some of the submitted information is not responsive to the instant request for information. The requestor only seeks information pertaining to visits to named inmates by a named individual. Accordingly, information pertaining to visits to other inmates or by individuals other than the named individual is not responsive to this request. The ruling does not address the public availability of the non-responsive information, and that information need not be released.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. This section encompasses constitutional privacy, which consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual’s interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual’s autonomy within “zones of privacy,” which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second 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)).

This office has applied constitutional privacy to protect certain information related to incarcerated individuals. *See* Open Records Decision Nos. 430 (1985), 428 (1985), 185 (1978). This office has held those individuals who correspond with inmates possess a “first amendment right . . . to maintain communication 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 at 2; *see State v. Ellefson*, 224 S.E.2d 666 (S.C. 1976). The information at issue in Open Records Decision No. 185 consisted of the identities of individuals who had corresponded with inmates. In that decision, 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.” ORD 185 at 2. Implicit in this holding is the fact that 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. Open Records Decision Nos. 430, 428. The rights of those individuals to anonymity was found to outweigh the public’s interest in this information. ORD 185; *see* ORD 430 (list of inmate visitors protected by constitutional privacy rights of both inmate and visitors).

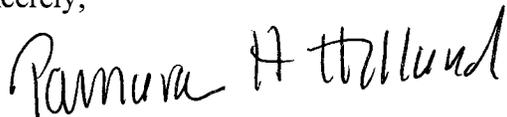
In this instance, the requestor is the Lubbock Private Defender’s Office (the “defender’s office”). The defender’s office explains it has a contract with the County of Lubbock “to provide indigent defense services for felony and misdemeanor cases in [the county.]” The defender’s office states that it uses subcontractors to provide this representation. Furthermore, the defender’s office explains the visitor information it seeks pertains to a contract attorney who provides such representation on behalf of the defender’s office. Thus, we understand the defender’s office is representing the inmates at issue. Accordingly, we find the requestor has a special right of access to the responsive information that would

normally be withheld on the basis of the inmates' privacy interests under section 552.023 of the Government Code. *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 the person and is protected from public disclosure by laws intended to protect that person's privacy interests). Therefore, the sheriff's office may not withhold any of the responsive information under section 552.101 in conjunction with constitutional privacy. As you raise no further exceptions to disclosure, the responsive information must be released to this requestor.¹

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/ac

Ref: ID# 517872

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹Because the information being released consists of confidential information to which the requestor has a right of access under section 552.023 of the Government Code, if the sheriff's office receives another request for this information from a person who does not have a right of access, the sheriff's office must again seek a ruling from this office.