



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 6, 2009

Ms. Bettie L. Wells  
General Counsel  
Texas Board of Pardons and Paroles  
P.O. Box 13401  
Austin, Texas 78711

OR2009-04473

Dear Ms. Wells:

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# 338922.

The Texas Board of Pardons and Paroles (the "board") received two requests from the same requestor for (1) the contact information of the attorneys who filed clemency petitions on behalf of any of forty-five named convicted capitol offenders, as well as (2) the names of convicted capital offenders on whose behalf clemency petitions have been filed within the last three years.<sup>1</sup> You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>2</sup>

Initially, we must address the board's procedural obligations under the Act. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state

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<sup>1</sup>We note that the board asked for and received clarification regarding the first request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

<sup>2</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

the exceptions that apply not later than the tenth business day after the date of receiving a written request for information. Gov't Code § 552.301(b). Section 552.308 states:

(a) When this subchapter requires a request, notice, or other document to be submitted or otherwise given to a person within a specified period, the requirement is met in a timely fashion if the document is sent to the person by first class United States mail or common or contract carrier properly addressed with postage or handling charges prepaid and:

- (1) it bears a post office cancellation mark or a receipt mark of a common or contract carrier indicating a time within that period; or
- (2) the person required to submit or otherwise give the document furnishes satisfactory proof that it was deposited in the mail or common or contract carrier within that period.

*Id.* § 552.308(a). The board indicates it received the first request for information on January 9, 2009. Accordingly, the board's ten business day deadline was January 26, 2009. In correspondence received by this office on January 29, 2009, the board requested a ruling regarding the first request for information. However, the envelope in which the board's first request for a ruling was sent to this office does not bear a postmark date. Further, the board has not furnished satisfactory proof that its first request for a ruling was deposited in the mail within the ten business day deadline. Thus, we are unable to determine that the board mailed its first request for a ruling within the ten business day deadline required by section 552.301(d). *See id.* § 552.308(a) (prescribing standards for timeliness of action by United States or common or contract carrier). Consequently, we find that the board failed to comply with the procedural requirements mandated by section 552.301 with respect to the first 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 of the Government Code can provide a compelling reason for non-disclosure, we will consider the applicability of this exception to 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 section 508.313 of the Government Code, which provides in part:

(a) All information obtained and maintained [by the board], including a victim protest letter or other correspondence, a victim impact statement, a list of inmates eligible for release on parole, and an arrest record of an inmate, is confidential and privileged if the information relates to:

(1) an inmate of the institutional division [of the Texas Department of Criminal Justice] subject to release on parole, release to mandatory supervision, or executive clemency;

(2) a releasee; or

(3) a person directly identified in any proposed plan of release for an inmate.

(b) Statistical and general information relating to the parole and mandatory supervision system, including the names of releasees and data recorded relating to parole and mandatory supervision services, is not confidential or privileged and must be made available for public inspection at any reasonable time.

(c) [The board] may provide information that is confidential and privileged under Subsection (a) to:

(1) the governor;

(2) a member of the board or a parole commissioner;

(3) the Criminal Justice Policy Council in performing duties of the council under Section 413.017 [of the Government Code]; or

(4) an eligible entity requesting information for a law enforcement, prosecutorial, correctional, clemency, or treatment purpose.

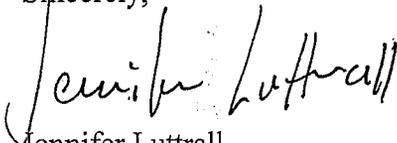
*Id.* § 508.313(a). The board states the submitted information consists of information it maintains that relates to an inmate subject to executive clemency. After reviewing the board's arguments and the submitted information, we agree this information is subject to section 508.313. You inform us that the requestor is not an entity authorized to obtain the submitted information under section 508.313(c). Further, we note this information is not

made public under section 552.029 of the Government Code. *See id.* § 508.313(f). We therefore conclude that the board must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code.

You also ask this office to issue a previous determination permitting the board to withhold the names and contact information of attorneys submitting clemency applications on behalf of offenders who are inmates or releasees to parole or mandatory supervision, as well as the names of capital offenders who are inmates or releasees to parole or mandatory supervision who have submitted clemency applications under section 508.313 of the Government Code without requesting a ruling from this office. We decline to issue such 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; 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 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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/eeg

Ref: ID# 338922

Enc. Submitted documents

c: Requestor  
(w/o enclosures)