



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 7, 2010

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

OR2010-08263

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# 384515.

The Texas Board of Pardons and Paroles (the "board") received a request for the clemency file pertaining to a named deceased inmate. You state you have released some of the requested information to the requestor. You claim that the submitted 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.

Initially, you state that portions of the requested information are the subject of previous determinations. This office issued Open Records Letter No. 2000-3696 (2000), which serves as a previous determination under section 552.301(a) of the Government Code for the board to withhold petitions for clemency. This office also issued Open Records Letter No. 2001-3026 (2001), which serves as a previous determination under section 552.301(a) of the Government Code for the board to withhold six categories of information maintained by the board as part of clemency applications. Therefore, pursuant to these previous determinations, the board must withhold clemency petitions and the six categories of information that are part of clemency applications from the requested information under section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code. *See* Open Records Decision No. 673 at 7-8 (2001) (listing elements of second type of previous determination under Gov't Code § 552.301(a)). We will address your argument under section 552.101 of the Government Code for the remaining requested 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 information protected by other statutes, such as section 508.313 of the Government Code, which provides in part:

(a) All information obtained and maintained, 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 [Texas Department of Criminal Justice], on request or in the normal course of official business, shall 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)-(c). You state the submitted information consists of information the board maintains that relates to an inmate subject to executive clemency. After reviewing your arguments and the submitted information, we agree this information is subject to section 508.313. You inform us the requestor is not an entity authorized to obtain the requested 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 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.

In summary, the board must withhold the information subject to the previous determinations in Open Records Letter Nos. 2000-3696 and 2001-3026 under section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code. 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 ask this office to issue a previous determination permitting the board to withhold any and all staff reports and electronic records maintained by the board in the clemency database 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, 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,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/sdk

Ref: ID# 384515

Enc. Submitted documents

c: Requestor
(w/o enclosures)