



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 3, 2010

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

OR2010-13484

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# 392554.

The Texas Board of Pardons and Paroles (the "board") received a request for one example of a pardon application that was approved and one example of a pardon application that was rejected. You state the board is withholding some of the requested information pursuant to previous determinations issued to the board in Open Records Letter Nos. 2000-3696 (2000) and 2001-3026 (2001).¹ You claim the submitted pardon applications are excepted from

¹Open Records Letter No. 2000-3696 authorizes the board to withhold, without the necessity of requesting a decision under the Act, petitions for clemency under section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code. Open Records Letter No. 2001-3026 authorizes the board to withhold under section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code, without the necessity of requesting a decision under the Act, six categories of information maintained by the board as part of clemency applications.

disclosure under section 552.101 of the Government Code.² 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 exception 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 [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.

Id. § 508.313(a); *see also id.* §§ 508.001(9) (“releasee” means a person released on parole or to mandatory supervision), .081(2) (defining “inmate” for purposes of chapter 508, subchapter B). You explain there are three categories of individuals who are eligible to apply for pardons: (1) inmates, (2) releasees, and (3) persons who were convicted but never sentenced to a term in prison or subject to parole or mandatory supervision and, thus, have never been inmates or releasees. You have submitted pardon applications for persons who fall into the third category of applicants who are neither inmates nor releasees. You assert the confidentiality provided by section 508.313 to information pertaining to inmates and releasees should be extended to persons who have never been sentenced because those persons are required to submit the same application and supporting materials to the board as inmates and releasees. You acknowledge, however, and the plain language of the statute reflects, section 508.313 applies to only inmates and releasees. Thus, because the submitted information does not pertain to inmates or releasees, we find you have failed to demonstrate the applicability of section 508.313(a) to the submitted information. *See Fitzgerald v. Advanced Spine Fixation Sys., Inc.*, 996 S.W.2d 864, 865-66 (Tex. 1999) (stating in interpreting statutes, goal of discerning legislature’s intent is served by beginning with statute’s plain language because it is assumed legislature tried to say what it meant and its words are, therefore, surest guide to its intent); *see also City of Fort Worth v. Cornyn*, 86

²We note, in your letter dated July 13, 2010, you withdrew your assertions under sections 552.026 and 552.111 of the Government Code.

S.W.3d 320, 324 (Tex. App.—Austin 2002, no pet.) (citing *Sorokolit v. Rhodes*, 889 S.W.2d 239, 241 (Tex.1994)) (“In applying the plain and common meaning of a statute, [one] may not by implication enlarge the meaning of any word in the statute beyond its ordinary meaning, especially when [one] can discern the legislative intent from a reasonable interpretation of the statute as it is written.”); *see also* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express, and confidentiality requirement will not be implied from statutory structure), 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Consequently, none of the submitted information may be withheld under section 552.101 of the Government Code in conjunction with section 508.313(a) of the Government Code.

You contend some of the submitted information is protected by common-law privacy. Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if it (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). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. This office has found some kinds of medical information or information indicating disabilities or specific illnesses are generally highly intimate or embarrassing. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). This office has also found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision No. 545 (1990). Upon review, we find the medical and salary information we have marked is not of legitimate public interest. Thus, the board must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. Although the remaining information you seek to withhold may be considered highly intimate or embarrassing, we find there is a legitimate public interest in this information as it pertains to the board’s decisions regarding whether or not to grant the requested pardons. Consequently, none of the remaining information at issue may be withheld under section 552.101 of the Government Code on the basis of common-law privacy.

The remaining information contains an applicant’s fingerprint. Section 552.101 also encompasses information other statutes make confidential, such as section 560.003 of the Government Code, which provides “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” Gov’t Code § 560.003; *see id.* § 560.001(1) (“biometric identifier” means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). There is no indication the requestor has a right of access to the fingerprint under section 560.002. *See id.* § 560.002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual’s biometric identifier to another person unless the individual consents to disclosure). Therefore, the board must withhold the fingerprint

we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

You state, and have indicated in the remaining information, the board will withhold driver's license numbers you have marked under section 552.130 of the Government Code pursuant to Open Records Decision No. 684 (2009). This decision acts as a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including *Texas* driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. We note one of the driver's license numbers you have marked is a Colorado driver's license number. Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). Because section 552.130 does not apply to out-of-state motor vehicle record information, the marked Colorado driver's license number may not be withheld on this basis pursuant to Open Records Decision No. 684.

We note the remaining information contains Texas motor vehicle record information, which we have marked. The board must withhold the marked Texas license plate number, license plate expiration date, and vehicle identification number under section 552.130 of the Government Code.³

In summary, the board must withhold the medical and salary information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; the fingerprint we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code; and the marked Texas license plate number, license plate expiration date, and vehicle identification number under section 552.130 of the Government Code. The remaining information must be released.⁴

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

³We note Open Records Decision No. 684 (2009) also authorizes governmental bodies to withhold Texas license plate numbers under section 552.130 of the Government Code without the necessity of requesting an attorney general decision.

⁴You indicate the board will withhold under section 552.137 of the Government Code pursuant to the previous determination issued in ORD 684 an applicant's e-mail address in the information to be released. The previous determination issued in ORD 684 authorizes all governmental bodies to withhold ten categories of information, including e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

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,

A handwritten signature in cursive script that reads "Leah B. Wingerson".

Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 392554

Enc. Submitted documents

c: Requestor
(w/o enclosures)