



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 8, 2011

Ms. Peggy D. Rudd  
Director and Librarian  
Texas State Library and Archives Commission  
P.O. Box 12927  
Austin, Texas 78711-2927

OR2011-12963

Dear Ms. Rudd:

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# 430150.

The Texas State Library and Archives Commission (the "commission") received a request for information from former Governor George W. Bush's administration's executive clemency files and public information request files pertaining to two named individuals. You explain the requestor has agreed to the redaction of some of the responsive information and state you will make some of the remaining responsive information available to the requestor.<sup>1</sup> You state the Texas Board of Pardons and Paroles (the "board") seeks to withhold the submitted information under section 552.101 of the Government Code. We have received arguments from the board. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

Section 552.101 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 relevant part:

(a) All information obtained and maintained [by the Texas Department of Criminal Justice], including a victim protest letter or other correspondence,

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<sup>1</sup>You assert the requestor has agreed to the redaction of information under section 552.101 of the Government Code in conjunction with common-law privacy and section 159.002 of the Occupations Code.

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.

...

(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 [Office of 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.

(e) This section does not apply to information relating to a sex offender that is authorized for release under Chapter 62, Code of Criminal Procedure.

(f) This section does not apply to information that is subject to required public disclosure under Section 552.029.

*Id.* § 508.313(a), (c), (e), (f). Section 508.313 requires the Texas Department of Criminal Justice (the “department”) to transfer information to the Office of the Governor (the “governor”) for consideration in clemency matters; such a transfer does not affect the confidentiality of the information. *See id.* § 508.313(c).

The board asserts the submitted petitions for clemency are confidential under section 508.313 in accordance with our ruling in 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 under section 508.313 of the Government Code. The board further claims the submitted six categories of information maintained by the board as part of clemency applications are confidential under section 508.313 in accordance with our

ruling in Open Records Letter No. 2001-3026 (2001), which serves as a previous determination for the board to withhold six categories of information maintained by the board as part of clemency applications under section 552.101 in conjunction with section 508.313(a). The board also contends the submitted staff reports pertaining to offenders subject to executive clemency and electronic records maintained in the clemency database and pertaining to offenders subject to executive clemency are confidential under section 508.313 in accordance with our ruling in Open Records Letter No. 2010-16375 (2010), which serves as a previous determination for the board to withhold staff reports pertaining to offenders subject to executive clemency and electronic records maintained in the clemency database and pertaining to offenders subject to executive clemency under section 552.101 in conjunction with section 508.313(a). The board additionally argues the remaining submitted information is confidential under section 508.313. The board states the information at issue was transferred by the board to the governor for consideration in a clemency matter. *See* Gov't Code § 508.313(c). The board does not inform us the requestor is an entity authorized to obtain the information at issue under section 508.313(c). *See id.* Additionally, we have no information to allow us to conclude section 503.313(e) requires the release of the information at issue in this case. *See id.* § 508.313(e). Furthermore, the board does not state the information at issue is made public by section 552.029 of the Government Code. *See id.* § 508.313(f). Based on the submitted arguments and our review, we find the submitted information is confidential pursuant to section 508.313 of the Government Code. Accordingly, the commission must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code.

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,



Mack T. Harrison  
Assistant Attorney General  
Open Records Division

MTH/em

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Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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