



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 27, 2012

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

OR2012-02883

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# 447107.

The Texas Board of Pardons and Paroles (the "board") received a request for documents sent to the board by the requestor with her application. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Initially, we must address the board's procedural obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(b), within ten business days after receiving the request the governmental body must request a ruling from this office and state the exceptions to disclosure that apply. *See* Gov't Code § 552.301(b). In this instance, you state the board received the request for information on December 5, 2011. Accordingly, the ten-business-day deadline was December 19, 2011. The board's request for a decision, however, bears a post office mark reflecting it was mailed on December 20, 2011. *See id.* § 552.308(a) (deadline under Act is met if document bears post office mark indicating time within deadline period). Consequently, we find the board failed to comply with section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information

is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *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 section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). You raise section 552.101 of the Government Code, which can provide a compelling reason to withhold information. Therefore, we will address your argument under section 552.101.

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). Thus, section 508.313 applies to information obtained or maintained by the board relating to an inmate or a releasee. A releasee means a person released on parole or to mandatory supervision. *Id.* § 508.001(9) (“releasee”); *see also id.* § 508.081(2) (defining “inmate” for purposes of chapter 508, subchapter B). You state the submitted information does not relate to an inmate of a Texas Department of Criminal Justice correctional facility. In addition, you state the information at issue is not related to parole or mandatory supervision. Thus, the requestor is not an inmate or releasee for purposes of section 508.313. 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 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.

We note a portion of the submitted information is subject to section 552.137 of the Government Code.¹ Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov’t Code § 552.137(a)-(c). The e-mail address we have marked is not of a type specifically excluded by section 552.137(c). Accordingly, the board must withhold the e-mail address we have marked under section 552.137, unless its owner affirmatively consents to disclosure.² As you raise no additional exceptions to disclosure, the remaining information must be released to the requestor.³

The board asks for a previous determination under section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code for information submitted to

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

³We note the requestor in this instance has a right of access to her own social security number, driver’s license number, and fingerprints, information that would otherwise be excepted from release under the Act. *See* Gov’t Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person’s agent on grounds that information is considered confidential by privacy principles); *see also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when person or person’s agent asks governmental body for information concerning the person). Should the department receive a request for this information from a different requestor, we note the department may redact social security numbers under section 552.147(b) of the Government Code and driver’s license numbers in accordance with section 552.130(c) of the Government Code without seeking a decision from this office. In addition, Open Records Decision No. 684 also authorizes governmental bodies to withhold fingerprints under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code without the necessity of requesting an attorney general decision.

the board by an applicant. Because the board has incorrectly applied section 508.313, we decline your request for a previous determination. Therefore, 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, 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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/eb

Ref: ID # 447107

Enc. Submitted documents

c: Requestor
(w/o enclosures)