



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 12, 2010

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

OR2010-06822

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# 379107.

The Texas Board of Pardons and Paroles (the "board") received a request for letters from three named individuals in support of clemency for a inmate who is now deceased and any other letters relating to this clemency request. You state the board does not have any documents pertaining to one of the named individuals.<sup>1</sup> You claim 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 portions of the requested information are the subject of a previous determination. This office 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. We have no information to allow us to conclude the law, facts, and circumstances on which Open Records Letter No. 2001-3026 was based have changed.

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<sup>1</sup> The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

Therefore, pursuant to this previous determination, the board must withhold 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 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). 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 that 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 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 ask this office to issue a previous determination permitting the board to withhold any and all correspondence in a clemency file maintained by the board 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, toll free, at (888) 672-6787.

Sincerely,



Mack T. Harrison  
Assistant Attorney General  
Open Records Division

MTH/rl/sdk

Ref: ID# 379107

Enc. Submitted documents

c: Requestor  
(w/o enclosures)