



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 2, 2012

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

OR2012-04702

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# 449354.

The Texas Board of Pardons and Paroles (the "board") received a request for the list of persons who signed in to meet with the board in regards to a specified inmate. 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, we must address the board's 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) of the Government Code, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. Gov't Code § 552.301(b). Furthermore, pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e). The submitted information indicates you received the instant request for information on December 12, 2011. The envelope in which the board provided the information required by section 552.301(b) was postmarked January 24, 2012, and the envelope in which the board

provided the information required by section 552.301(e) was postmarked February 7, 2012. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we conclude the board failed to comply with the procedural requirements mandated by 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). Because the board's claim under section 552.101 of the Government Code can provide a compelling reason for non-disclosure under section 552.302, we will address your argument under that exception.

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, including section 508.117 of the Government Code which pertains to the board's victim notification procedures. *Id.* § 508.117. Section 508.117 provides in relevant part:

(a) Before a parole panel considers for release on parole an inmate who is serving a sentence for an offense in which a person was a victim, the [pardons and paroles division], using the name and address provided on the victim impact statement, shall make a reasonable effort to notify:

...

(3) if the victim is deceased, a close relative of the deceased victim.

...

(f) Except as necessary to comply with this section, the board . . . may not disclose to any person the name or address of a person entitled to notice under this section unless:

(1) the person approves the disclosure; or

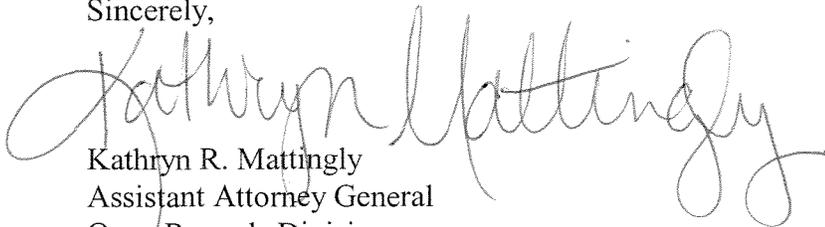
(2) a court determines that there is good cause for disclosure and orders the board . . . to disclose the information.

Id. § 508.117(a)(3), (f). You state the submitted information relates to persons who visited the board in regards to an inmate who is serving a sentence for capital murder. You further assert the submitted information includes the name and address of an individual who is a close relative of the deceased victim, and who is, therefore, entitled to notice under section 508.117(a)(3). *See id.* § 508.117(a)(3); *see also id.* § 508.117(g)(1) (defining close relative of a deceased victim). Based on your representations, we find section 508.117(f) is applicable to the name and address of the close relative of the deceased victim contained in the submitted information. You have not indicated, nor does the submitted information reflect, either of the exceptions to confidentiality in section 508.117(f) applies in this case. *See id.* § 508.117(f). Accordingly, the board must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 508.117(f) of the Government Code. However, we find none of the remaining information you have marked consists of the name or address of a person entitled to notice under section 508.117, and therefore, it may not be withheld on that basis.

The board asks for a previous determination for the name and address of a “close relative of a deceased victim” under section 552.101 of the Government Code in conjunction with section 508.117 of the Government Code. We decline your request for a previous determination at this time. 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,



Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/dls

Ref: ID# 449354

Enc. Submitted documents

c: Requestor
(w/o enclosures)