



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 14, 2014

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

OR2014-08243

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# 522709.

The Texas Board of Pardons and Paroles (the "board") received a request for information pertaining to a named executed 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.

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 section encompasses information protected by other statutes. Section 508.313 of the Government Code provides, in part, the following:

(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 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 electronic records maintained by the board in the clemency database relating to an inmate who was subject to executive clemency. The inmate at issue, however, was executed before the board received the instant request for information. In Attorney General Opinion H-917 (1976), we first announced this office would follow the uniform rule that the common law right of privacy lapses upon death. *See* Open Records Decision No. 272 (1981). We have determined, however, there is no similar presumption that prohibitions against disclosure in confidentiality statutes lapse upon the death of the subject of the information. Attorney General Opinion DM-61 at 3 (1991), JM-851 at 2 (1988); *see also* Attorney General Opinion JM-229 (1984); Open Records Decision No. 529 (1989). Whether a confidentiality provision lapses upon death is a question of statutory construction. Attorney General Opinion DM-61 at 3 (1991); Open Records Decision No. 524 at 3 (1989). We have previously stated a confidentiality provision will lapse upon death when the statute is enacted merely to protect information that would be covered by a common law right of privacy or when the statute only protects a living person's privacy. Open Records Decision Nos. 536 (1989) (provision which protects police officer's photograph ceases to apply after death of officer), 524 at 3 (1989) (confidentiality of student records under Gov't Code § 552.114 lapses upon death). In other instances where we have found that a statutory provision would lapse upon death, we

have determined the statute was specifically applicable to living persons, and the circumstances involved the release of the information in question based on another statutory obligation. Attorney General Opinion DM-61 (1991) (death certificates); Open Records Decision No. 529 (1989) (autopsy reports). Conversely, we have held that when nothing in the statute indicates the legislature intended the confidentiality provisions to apply only during lifetime, the statutory protection would not lapse upon the death of the subject of the information. Attorney General Opinions JM-851 at 2 (1988), JM-229 at 4 (1984).

At the time the requested information in this case was obtained and maintained by the board, it related to an inmate who was subject to executive clemency. After reviewing section 508.313, we find nothing in the statute itself to indicate the legislature intended the provision to apply only during the lifetime of the inmates. Furthermore, the confidentiality provision appears to protect more than the inmate's privacy interests. It protects the deliberations of the board by encouraging frank and open discussion in its decision-making process. We conclude, therefore, the requested information is confidential under section 508.313 of the Government Code, regardless of the fact the inmate at issue was deceased at the time the instant request was made. Thus, we find the submitted information is confidential under section 508.313(a). The submitted information does not consist of statistical and general information relating to the parole and mandatory supervision system. *See* Gov't Code § 508.313(b). Additionally, you inform us the requestor is not an entity authorized to obtain the requested information under section 508.313(c). Finally, we note the information is not subject to section 552.029 of the Government Code. *See id.* § 508.313(f). Therefore, we conclude the board must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 508.313(a) of the Government Code.

You also ask this office to issue a previous determination permitting the board to withhold any and all electronic records of deceased inmates who were subject to executive clemency maintained in the clemency database under section 552.101 of the Government Code in conjunction with section 508.313(a) of the Government Code, without the necessity of requesting a ruling from our office under the Act. However, you acknowledge we granted a previous determination to the board in Open Records Letter No. 2010-16375 (2010) to withhold electronic records maintained in the clemency database and pertaining to inmates who are subject to executive clemency under section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code. As the statutory protection of section 508.313 does not lapse at death, we find the previous determination granted in Open Records Letter No. 2010-16375 also covers the electronic records of a deceased inmate who was subject to executive clemency maintained in the clemency database. Therefore, we need not issue another previous determination for the information at issue. Accordingly, this letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us, and 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Lee Seidlits  
Assistant Attorney General  
Open Records Division

CLS/tch

Ref: ID# 522709

Enc. Submitted documents

c: Requestor  
(w/o enclosures)