



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

October 3, 2006

Ms. Ashley D. Fourt
Assistant District Attorney
Tarrant County
401 West Belknap
Fort Worth, Texas 79196-0201

OR2006-11505

Dear Ms. Fourt:

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# 260817.

The Tarrant County District Attorney's Office (the "district attorney") received a request for nine categories of information related to jurors and jury selection in Cause Number 1021927. You claim that the requested information is not public information subject to the Act or is excepted from disclosure under sections 552.101, 552.108, and 552.111 of the Government Code. We have considered your claims and reviewed the submitted information.

You first claim that the requested list of jurors for June 12, 2006 is a record of the judiciary that is not subject to the Act under section 552.003 of the Government Code. The Act generally requires the public disclosure of information maintained by a "governmental body." While the Act's definition of a "governmental body" is broad, it specifically excludes the judiciary. *See Gov't Code § 552.003(1)(B)*. In determining whether a governmental entity falls within the judiciary exception of the Act, this office looks to whether the entity is acting in a judicial capacity or solely in an administrative capacity. *See Open Records Decision No. 646 at 2-3 (1996) (citing Benavides v. Lee, 665 S.W.2d 151 (Tex. App.—San Antonio 1983, no writ))*. Chapter 62 of the Government Code, which concerns the judiciary, provides for the compilation of a list of prospective jurors. *See Gov't Code §§ 62.001-62.011 (detailing jury list selection methods such as a jury wheel and electronic or mechanical selection)*. Section 62.012 of the Government Code provides the following:

(a) When a justice of the peace or a county or district judge requires a jury for a particular week, the judge, within a reasonable time before the prospective jurors are summoned, shall notify the county clerk, for a county court jury, or the district clerk, for a justice or district court jury, to open the next consecutively numbered envelope containing a jury list that is in the clerk's possession and has not been opened. The judge shall also notify the clerk of the date that the prospective jurors are to be summoned to appear for jury service.

(b) On receiving the notice from the judge, the clerk shall immediately write on the jury list the date that the prospective jurors are to be summoned to appear and shall deliver the jury list to:

- (1) the sheriff, for a county or district court jury; or
- (2) the sheriff or constable, for a justice court jury.

Gov't Code 62.012. Upon receipt of the jury list, the sheriff summons the prospective jurors to appear on the designated day. *Id.* § 62.013. Chapter 19 of the Code of Criminal Procedure outlines a similar procedure for the selection of prospective grand jurors. *See* Tex. Code Crim. Proc. arts. 19.01-.42.

In Open Records Decision No. 433 (1986), this office determined that a list of prospective grand jurors is a record of the judiciary because the list is "compiled, and at virtually all times is maintained, by the jury commissioners, the district judge, or the court clerk, all of whom are part of the judiciary or agents thereof." ORD 433 at 2-3. We also found that the sheriff was considered an agent of the judiciary when using the grand jury list to summon the jurors for service. *Id.* However, the district attorney holding a list of names of impaneled jurors was found not to be acting as an agent of the judiciary, since he had "no task to perform with that list." *Id.* at 3. Thus, the list of impaneled jurors held by the district attorney was not within the constructive possession of the judiciary, and was subject to the Act. *Id.*

The list of jurors at issue here is held by the district attorney. Based upon the reasoning in Open Records Decision No. 433, we find that the requested list of jurors is not a record of the judiciary, and is therefore subject to the Act. *See* Gov't Code § 552.021 (Act generally requires disclosure of information maintained by "governmental body").

We next address your claim that the submitted "unsigned form letters" are excepted under section 552.108 of the Government Code. Section 552.108 provides in part:

- (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) represents the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

...

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) represents the mental impressions or legal reasoning of an attorney representing the state

Gov't Code § 552.108(a)(4), (b)(3). Sections 552.108(a)(4) and 552.108(b)(3) are applicable to information that was prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or that reflects the mental impressions or legal reasoning of an attorney representing the state. In this instance, you represent that the information at issue consists of the district attorney's work product, and assert that release of this information would reveal the district attorney's mental impressions and legal reasoning regarding the handling of the case at issue. After reviewing the submitted documents and your representations, we agree that the material that you seek to withhold as attorney work product may be withheld under section 552.108(a)(4) and 552.108(b)(3). We have marked these documents accordingly.¹

Finally, you claim that information regarding the jurors selected for jury duty is excepted from disclosure under section 552.101 of the Government Code. Gov't Code § 552.101. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses

¹As section 552.108 is dispositive, we do not address your section 552.111 claim regarding release of this information.

information protected by other statutes. Information collected about jurors in the jury selection process is governed by article 35.29 of the Code of Criminal Procedure, which provides:

Information collected by the court or by a prosecuting attorney during the jury selection process about a person who serves as a juror, *including the juror's home address, home telephone number, social security number, driver's license number, and other personal information*, is confidential and may not be disclosed by the court, the prosecuting attorney, the defense counsel, or any court personnel except on application by a party in the trial or on application by a bona fide member of the news media acting in such capacity to the court in which the person is serving or did serve as a juror. On a showing of good cause, the court shall permit disclosure of the information sought. [Emphasis added].

Crim. Proc. Code art. 35.29. Article 35.29 makes confidential certain personal information pertaining to only those individuals who actually served on the petit jury in a criminal trial. In addition to the confidential information listed in article 35.29, "other personal information" which is confidential pursuant to article 35.29 includes the juror's present employer, business telephone number, and spouse's employer. Juror names, however, are not made confidential by article 35.29, and are not "other personal information" that is confidential pursuant to article 35.29. You have not sufficiently explained how the remaining information includes information about individuals who actually served as jurors, and it does not appear to us that it does. Accordingly, the district attorney may not withhold any of the remaining information under section 552.101 based on article 35.29.

Accordingly, the "unsigned form letters" may be withheld as attorney work product under section 552.108(a)(4) and 552.108(b)(3) of the Government Code. The remaining submitted information must be released to the requestor.

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 example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

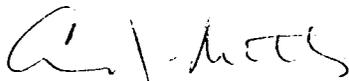
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/krl

Ref: ID# 260817

Enc. Submitted documents

c: Mr. Jerry J. Loftin
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(w/o enclosures)