



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 3, 2011

Mr. Scott A. Durfee
Assistant General Counsel
Harris County District Attorney's Office
1201 Franklin, Suite 600
Houston, Texas 77002-1923

OR2011-05998

Dear Mr. Durfee:

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# 416176.

The Harris County District Attorney's Office (the "district attorney") received a request for information pertaining to the members of the May 2010 Term Grand Jury for Harris County. You state the district attorney does not maintain information responsive to a portion of the request.¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We also have considered comments submitted by the requestor. *See Gov't Code* § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

Initially, the requestor contends that because the district attorney routinely releases the names of grand jurors, this information constitutes "information regarded as open to the public under an agency's policies[,]” which is made expressly public under section 552.022(a)(15)

¹We note the Act does not require a governmental body to release information that did not exist when it received a request or create information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

of the Government Code. *See id.* § 552.022(a)(15). However, the requestor does not direct us to any district attorney policy which makes the names of grand jurors expressly public. We note that although section 552.001 of the Government Code requires the Act “be liberally construed in favor of granting a request for information[,]” information may nevertheless be withheld from public disclosure if an exception under the Act applies. *Id.* § 552.001(b).

You assert that the district attorney is prohibited from releasing portions of the submitted information pursuant to a court order. Section 552.107(2) excepts information from disclosure if “a court by order has prohibited disclosure of the information.” *Id.* § 552.107(2). We note you have submitted a court order that provides in pertinent part:

[T]his Court ORDERS the District Clerk, District Attorney and any other Harris County official, and their deputies to not release the names, addresses or telephone numbers of members of the Court’s May 2010 Term Grand Jury. This information shall not be released without the express written permission of the duly elected judge of the 183rd District Court. This Order is to remain in effect until further orders of this Court.

Order Sealing Grand Juror Names, (183rd Dist. Ct., Harris County, Tex., February 17, 2011). We note that the submitted order is specifically made applicable to the district attorney. Accordingly, based on your representations and our review, we conclude that the district attorney must withhold the names, addresses, and telephone numbers of the grand jurors at issue, which we have marked, under section 552.107(2) of the Government Code.

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 made confidential by statute, such as Texas Code of Criminal Procedure article 19.42, which provides:

(a) Except as provided by Subsection (b), information collected by the court, court personnel, or prosecuting attorney during the grand jury selection process about a person who serves as a grand juror, including the person’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, court personnel, or prosecuting attorney.

(b) On a showing of good cause, the court shall permit disclosure of the information sought to a party to the proceeding.

Crim. Proc. Code art 19.42. Article 19.42 makes confidential certain “personal information” pertaining to individuals who served grand juries, effective September 1, 1999. Accordingly, we find that the district attorney must withhold the remaining grand juror information, which

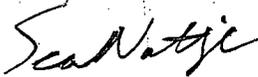
we have marked, under section 552.101 in conjunction with section 19.42 of the Code of Criminal Procedure.

In summary, the district attorney must withhold the names, addresses, and telephone numbers of the grand jurors at issue, which we have marked, under section 552.107(2) of the Government Code. The district attorney must withhold the remaining grand juror information, which we have marked, under section 552.101 in conjunction with section 19.42 of the Code of Criminal Procedure.

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/eeg

Ref: ID# 416176

Enc. Submitted documents

c: Requestor
(w/o enclosures)