



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 6, 2014

Mr. Scott A. Durfee
Assistant General Counsel
County of Harris
1201 Franklin, Suite 600
Houston, Texas 77002-1901

OR2014-20158

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# 542430.

The Harris County District Attorney's Office (the "district attorney's office") received a request for the names of all grand jurors, grand jury foremen, and grand jury commissioners since January 1, 2004, and the court and dates in which they served. We understand the district attorney's office has released some of the requested information. The district attorney's office claims the submitted information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code. We have considered the claimed exceptions and reviewed the submitted representative sample of information.¹ We have also considered comments submitted by a representative of the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Initially, we note only the submitted names of grand jurors and the courts and dates in which the grand jurors served are responsive to the request for information. This ruling does not address the public availability of the remaining information, which is not responsive to the request, and the district attorney's office is not required to release this information in response to this request.

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. Article 19.42 of the Code of Criminal Procedure reads as follows:

- (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 on grand juries, effective September 1, 1999. This office has determined article 19.42 does not make the names of such individuals confidential. *See* Attorney General Opinion GA-0422 at 3 (2006) (grand jurors' identities are not "personal information" for purposes of article 19.42); Open Records Decision No. 433 (1986) ("As a practical matter . . . the names of the impaneled grand jurors will already have been publicly divulged, since the impaneling will have taken place in open court."). Therefore, we conclude the district attorney's office may not withhold the requested names of grand jurors, grand jury foremen, and grand jury commissioners under section 552.101 of the Government Code in conjunction with article 19.42 of the Code of Criminal Procedure. *See* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express, and confidentiality requirement will not be implied from statutory structure), 649 at 3 (1996) (language of confidentiality provision controls scope of its protection), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to public).

The district attorney's office has submitted orders of various courts prohibiting the district attorney's office from releasing the names of jurors in the courts at issue. The submitted court orders provide the prohibition against release "is to remain in effect until further Orders of this Court." You do not inform us, nor is it apparent from the submitted information, whether the courts at issue have entered further orders with regard to the submitted juror names. Accordingly, it is unclear to what extent the submitted information is covered by

orders that are still in effect. Therefore, to the extent the district attorney's office is currently subject to a court order prohibiting the release of the submitted juror names, the district attorney's office must withhold such information under section 552.107(2) of the Government Code. Conversely, to the extent the district attorney's office is no longer subject to a court order prohibiting the release of the submitted juror names, the district attorney's office may not withhold such information under section 552.107(2) but, instead, must release it to the requestor.

Finally, we note the requestor challenges the validity of the court orders at issue based on First Amendment grounds. However, it is beyond the jurisdiction of this office to determine whether the courts at issue acted properly in issuing the orders or to determine the validity of the court orders. Therefore, the district attorney's office must withhold the requested juror names under section 552.107(2) to the extent the district attorney's office is currently subject to a court order prohibiting the release of this information.

To conclude, to the extent the district attorney's office is currently subject to a court order prohibiting the release of the submitted juror names, the district attorney's office must withhold such information under section 552.107(2) of the Government Code. To the extent the district attorney's office is no longer subject to a court order prohibiting the release of the submitted juror names, the district attorney's office must release such information to the requestor.

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.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,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/cbz

Ref: ID# 542430

Enc. Submitted documents

c: Requestor
(w/o enclosures)