



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 10, 2016

Ms. Ann-Marie Sheely
Assistant County Attorney
County of Travis
P.O. Box 1748
Austin, Texas 78767

OR2016-18067

Dear Ms. Sheely:

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# 622127.

The Travis County District Attorney's Office (the "district attorney's office") received a request for (1) the name, age, race, and gender of grand jurors associated with a specified cause number and (2) an interview transcript associated with a specified cause number.¹ You state you released the interview transcript. You claim the submitted information is not subject to the Act. Alternatively, you claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the submitted arguments and reviewed the submitted representative sample of information.²

¹You inform us the district attorney's office sent the requestor an estimate of charges pursuant to section 552.2615 of the Government Code. *See* Gov't Code § 552.2615. The estimate of charges required the requestor to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. *See id.* § 552.263(a). You also inform us the district attorney's office received the required deposit on May 24, 2016. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date governmental body receives bond or deposit).

²We 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 the requestor seeks only the name, age, gender, and race of each grand juror impaneled in association with a specified cause number. Thus, the remaining personal information pertaining to the grand jurors is not responsive to the present request. This ruling does not address the public availability of any information that is not responsive to the request, and the district attorney's office is not required to release that information in response to the request.

Next, you argue the responsive information constitutes records of the judiciary not subject to the Act. 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 deals with the judicial branch, 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:

(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.

Id. § 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. In Open Records Decision No. 433 (1986), this office determined 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 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 not found 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 responsive information is held by the district attorney’s office. Based upon the reasoning in Open Records Decision No. 433, we find this information does not constitute records 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”). Accordingly, we will consider whether the responsive information is excepted from disclosure under the Act.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. This exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with article 19.42 of the Code of Criminal Procedure, which provides 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 grand juries, effective September 1, 1999. We note, however, this office has determined that 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 Crim. Proc. Code art. 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.”). Upon review, we find a portion of the responsive information consists of the personal information of grand jurors. Accordingly, the district attorney’s office must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 19.42 of the Code of Criminal Procedure. The district attorney’s office must release the remaining responsive information.

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,



Meagan J. Conway
Assistant Attorney General
Open Records Division

MJC/akg

Ref: ID# 622127

Enc. Submitted documents

c: Requestor
(w/o enclosures)