



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

March 16, 2017

Mr. Mark C. Kratovil  
Assistant District Attorney  
Tarrant County  
401 West Belknap, 9th Floor  
Fort Worth, Texas 76196-0201

OR2017-05429

Dear Mr. Kratovil:

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# 649511.

The Tarrant County District Attorney's Office (the "district attorney's office") received a request for the names of the grand jury members associated with a specified case involving a named inmate. You assert the district attorney's office need not comply with the request to release the requested information pursuant to section 552.028 of the Government Code. In the alternative, you claim the submitted information is excepted from disclosure under section 552.101 of the Government Code and protected under rule 12.5 of the Rules of Judicial Administration. We have considered your submitted arguments and reviewed the submitted information.

Initially, you assert the district attorney's office need not comply with the instant request pursuant to section 552.028 of the Government Code. Section 552.028 provides as follows:

- (a) A governmental body is not required to accept or comply with a request for information from:
  - (1) an individual who is imprisoned or confined in a correctional facility; or

(2) an agent of that individual, other than that individual's attorney when the attorney is requesting information that is subject to disclosure under [the Act].

(b) This section does not prohibit a governmental body from disclosing to an individual described by Subsection (a)(1), or that individual's agent, information held by the governmental body pertaining to that individual.

(c) In this section, "correctional facility" means:

(1) a secure correctional facility, as defined by Section 1.07, Penal Code;

(2) a secure correctional facility and a secure detention facility, as defined by Section 51.02, Family Code; and

(3) a place designated by the law of this state, another state, or the federal government for the confinement of a person arrested for, charged with, or convicted of a criminal offense.

Gov't Code § 552.028. The district attorney's office asserts the requestor is the agent of an incarcerated individual because the requestor shares a last name and telephone area code with the incarcerated person's emergency contact. Further, the district attorney's office asserts the handwriting contained on the request for information closely resembles the incarcerated individual's handwriting. However, upon review, we find the district attorney's office has not established the requestor is requesting information on behalf of the named inmate. Thus, we find you have failed to demonstrate the request for information was submitted by an agent of an individual who is imprisoned or confined in a correctional facility. Accordingly, we conclude section 552.028 of the Government Code does not permit the district attorney's office to decline to comply with this request.

Next, we note the requestor seeks only the names of certain grand jury members. You have submitted documents that contain information beyond these specific pieces of information. Thus, the portions of the submitted documents that do not consist of the information requested are not responsive to the present request. This ruling does not address the public availability of the non-responsive information and the district attorney's office need not release it in response to this request.

The district attorney's office also argues the responsive information is exempt from disclosure under rule 12.5(f) of the Rules of Judicial Administration. Rule 12 applies to the judiciary only and governs the public disclosure of judicial records, which are not subject to the Act. TEX. R. JUD. ADMIN. 12; Gov't Code §§ 552.003(a)(B), .0035(a). In this instance, the responsive information consists of information held by the district attorney's office.

Because this information is maintained by the district attorney's office, rule 12 does not apply. Therefore, the responsive information is subject to the Act, and it may only be withheld if it is excepted from disclosure under an exception in the Act.

Additionally, we must address the obligations of the district attorney's office under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See id.* § 552.301(a), (b). In addition, pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving an open records request: (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e)(1)(A)-(D). In this instance, you state the district attorney's office received the request for information on December 2, 2016. We understand the district attorney's office was closed on December 23 and December 26, 2016. This office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. Accordingly, the district attorney's office's ten-business-day deadline was December 16, 2016, and its fifteen-business-day-deadline was December 27, 2016. However, the envelope in which you submitted your request for a decision and the information required by section 552.301(e)(1)(A)-(C) was post-marked January 6, 2017. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we find the district attorney's office failed to comply with the requirements of section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302 (where request for attorney general decision does not comply with requirements of section 552.301, information at issue is presumed to be public); *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). You assert the requested information is excepted under section 552.101 of the Government Code. Because section 552.101 of the

Government Code can provide a compelling reason to overcome the presumption of openness, we will address the applicability of this section to the responsive 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 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 on grand juries. 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.”). Therefore, the district attorney’s office may not withhold the requested names of grand jury members under section 552.101 of the Government Code in conjunction with section 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 must release the 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,

A handwritten signature in black ink that reads "Kaelan A. Henze". The signature is written in a cursive style with a large initial "K" and a stylized "A".

Kaelan A. Henze  
Assistant Attorney General  
Open Records Division

KAH/eb

Ref: ID# 649511

Enc. Submitted documents

c: Requestor  
(w/o enclosures)