



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 25, 2017

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

OR2017-16605

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# 667742 (TCDA Document No. 495472-1).

The Travis County District Attorney's Office (the "district attorney's office") received a request for three specified lists of individuals. The district attorney's office states it will release some information to the requestor. The district attorney's office claims the submitted information is not subject to the Act. Alternatively, the district attorney's office claims 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.<sup>1</sup> We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, you argue the submitted 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

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<sup>1</sup>We 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.

specifically excludes the judiciary. *See id.* § 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 submitted 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 submitted 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. The district attorney's office raises 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.

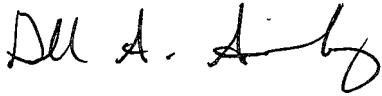
Crim. Proc. Code art. 19.42. Article 19.42 makes confidential certain "personal information" pertaining to individuals who served on grand juries. *See* Attorney General Opinion GA-0422 at 3 (2006) (grand jurors' identities are not "personal information" for purposes of Crim. Proc. Code art. 19.42); 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 submitted 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 article 19.42 of the Code of Criminal Procedure. The district attorney's office must release the remaining 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](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, appearing to read "Gerald A. Arismendez". The signature is fluid and cursive, with a prominent initial "G" and a long, sweeping tail.

Gerald A. Arismendez  
Assistant Attorney General  
Open Records Division

GAA/tdw

Ref: ID# 667742

Enc. Submitted documents

c: Requestor  
(w/o enclosures)