



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 2, 2017

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

OR2017-17354

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# 669819.

The Tarrant County Criminal District Attorney's Office (the "district attorney's office") received a request for the names and demographic information of grand jurors who served and any information concerning the grand jury hearing for three specified cases involving a named individual. You state the district attorney's office does not have some of the requested information.¹ 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 some of 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 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:

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

(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 is on the incarcerated individual's visitor list. Further, the district attorney's office asserts the request is similar to other requests received by agents of incarcerated individuals at a specified prison. 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 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 February 20, 2017. Accordingly, the district attorney's office's ten-business-day deadline was March 6, 2017, and its fifteen-business-day-deadline was March 13, 2017. 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 May 24, 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 procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). 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. *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 the district attorney’s office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with article 19.42 of the Code of Criminal Procedure. As no other exceptions to disclosure are raised, 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, 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,



Jahna Ward
Attorney
Open Records Division

JW/eb

Ref: ID# 669819

Enc. Submitted documents

c: Requestor
(w/o enclosures)