



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 3, 2017

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

OR2017-22517

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# 670319.

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 a specified case involving a named individual. The district attorney's office claims it is not required to respond to the request for information pursuant to section 552.028 of the Government Code, and some of the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered submitted arguments and reviewed the submitted information.

Section 552.028 of the Government Code provides, in relevant part, the following:

- (a) A governmental body is not required to accept or comply with a request for information from:

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<sup>1</sup>We note the district attorney's office did not comply with the requirements of section 552.301 of the Government Code. *See* Gov't Code § 552.301(b), (e). Nevertheless, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301, we will consider the claim of the district attorney's office under that section.

(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 this chapter.

(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.

Gov't Code § 552.028(a)-(b). 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 the district attorney's office has 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.

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 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.

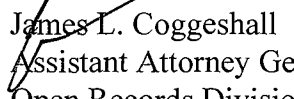
Crim. Proc. Code art. 19.42. Article 19.42 makes confidential certain "personal information" pertaining to individuals who served on grand juries. However, this office has determined article 19.42 does not make the names of such individuals confidential. *See* Attorney General Opinion GA-0422 at 3 (2006) (grand jurors' identities are not "personal information" for purposes of 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 some of the submitted information, which we have marked, is confidential under article 19.42. Therefore, 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. However, the remaining information is not confidential under article 19.42, and the district attorney's office may not withhold it under section 552.101 on that ground. Accordingly, 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,

  
James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/eb

Ref: ID# 679319

Enc. Submitted documents

c: Requestor  
(w/o enclosures)