



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 28, 2018

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

OR2018-04700

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# 697126.

The Tarrant County Criminal District Attorney's Office (the "district attorney's office") received a request for grand jury information related to a specified cause number involving a named inmate. You claim the district attorney's office is not required to respond to the request for 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.¹ We have considered the 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:

(1) an individual who is imprisoned or confined in a correctional facility; or

¹We 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.

(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). You assert the requestor is the agent of an incarcerated individual because the requestor is on the incarcerated individual's visitor list. Further, you assert the request is similar to other requests received by agents of incarcerated individuals at a specified prison. However, upon review, we find you have not established the requestor is requesting information on behalf of the named inmate. Thus, we find the district attorney's office 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." *Id.* § 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. We note, however, article 19.42 applies only to grand juror selections made on or after September 1, 1999. *See* Act of May 30, 1999, 76th Leg., R.S., ch. 1777, § 4, 1999 Tex. Sess. Law Serv. 1777. Upon review, we find the information at issue pertains to grand jurors selected before September 1, 1999. Thus, the information at issue is not confidential under article 19.42, and the district attorney's office may not withhold any portion of the information at issue under section 552.101 on this ground.

Section 552.101 of the Government Code also encompasses the common-law physical safety exception. The Texas Supreme Court has recognized a separate common-law physical safety

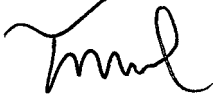
exception to required disclosure. *Tex. Dep't of Pub. Safety v. Cox Tex. Newspapers, L.P. & Hearst Newspapers, L.L.C.*, 343 S.W.3d 112, 118 (Tex. 2011). Pursuant to this common-law physical safety exception, "information may be withheld [from public release] if disclosure would create a substantial threat of physical harm." *Id.* In applying this new standard, the court noted "deference must be afforded" law enforcement experts regarding the probability of harm, but further cautioned, "vague assertions of risk will not carry the day." *Id.* at 119.

You argue the submitted information is excepted under section 552.101 of the Government Code in conjunction with the common-law physical safety exception. Upon review, we conclude the you have made only vague assertions of risk of harm that could result from the disclosure of any of the information at issue. Thus, you have failed to demonstrate release of any of the information at issue would subject anyone to a specific risk of harm. Accordingly, the district attorney's office may not withhold any portion of the information at issue under section 552.101 of the Government Code in conjunction with the common-law physical safety exception. As you raise no further exceptions to disclosure, the district attorney's office must release the submitted 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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/tdw

Ref: ID# 697126

Enc. Submitted documents

c: Requestor
(w/o enclosures)