



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

August 23, 2019

Ms. Candice Flores  
Office Manager  
216th Judicial District  
Gillespie and Kerr County  
402 Clearwater Paseo, Suite 400  
Kerrville, Texas 78028

OR2019-23651

Dear Ms. Flores:

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# 782732.

The 216<sup>th</sup> Judicial District Attorney's Office (the "district attorney's office") received a request for grand jury information pertaining to a specified proceeding. The district attorney's office claims the requested information is not subject to the Act. We have considered the submitted arguments. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

The district attorney's office asserts the requested information is not subject to the provisions of the Act because it was in the constructive possession of the grand jury. 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 specifically excludes the judiciary. *See* Gov't Code § 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-.011 (detailing jury list selection methods such as a jury wheel and electronic or mechanical selection). Section 62.012 of the Government Code provides as follows:

(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.*

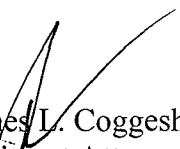
It appears some of the requested information is located in a list of impaneled jurors pertaining to the proceeding at issue that the district attorney's holds. Based on the reasoning in Open Records Decision No. 433, we find this information, to the extent it existed when the district attorney's office received the request, 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"). We note the district attorney's office did not submit any information in its request for a ruling. Accordingly, we assume, to the extent the district attorney's office possessed a list of impaneled jurors related to proceeding at issue when it received the request for information, it has released such information. If not, then the district attorney's office must do so immediately. *See* Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000).

The district attorney's office represents it maintains the remaining requested information solely as an agent of the grand jury and the information is, thus, in the constructive possession of the grand jury. Accordingly, we agree the remaining information consists of records of the judiciary and is not subject to the disclosure requirements of the Act. Thus, the district attorney's office is not required to release the remaining requested information in response to this request.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/gw

Ref: ID# 782732

c: Requestor