



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 9, 2020

Mr. Naved Qazi
Assistant District Attorney
County of Nueces
901 Leopard, Room 206
Corpus Christi, Texas 78401-3681

OR2020-30748

Dear Mr. Qazi:

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# 857281.

The Nueces County District Attorney's Office (the "district attorney's office") received a request for a specified grand jury report and information pertaining to a specified case presented to the grand jury.¹ You claim some of the requested information is not subject to the Act. You also claim the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.

The district attorney's office asserts some of 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.

¹ The district attorney's office sought and received clarification of the information requested. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

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 office 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").

You also claim the requested grand jury member information is personal information made confidential under article 19.42 of the Code of Criminal Procedure. 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. 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 none of the requested information at issue is confidential under article 19.42. Therefore, the district attorney’s office may not withhold the requested grand jury information under section 552.101 on that ground. Accordingly, the district attorney’s office must release the requested grand jury member information. *See* Gov’t Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000).

You assert the submitted information is excepted under section 552.108 of the Government Code, which provides the following:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

...

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;

...

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

...

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(2), (a)(4), (b)(3). A governmental body raising section 552.108 must reasonably explain the applicability of section 552.108. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A); Open Records Decision No. 434 (1986). You state Exhibits 2 and 3 pertain to a criminal investigation that did not result in conviction or deferred adjudication. Based on this representation, we agree section 552.108(a)(2) is applicable to Exhibits 2 and 3.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov't Code § 552.108(c). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, the district attorney's office may withhold Exhibits 2 and 3 under section 552.108(a)(2) of the Government Code.

You also state Exhibit 4 consists of internal records and notations which reflect the mental impressions or legal reasoning of attorneys representing the state. You further state the communications are maintained for internal use in matters relating to criminal prosecutions and were not intended for public disclosure. Upon review, we agree Exhibit 4 reflects the mental impressions or legal reasoning of attorneys representing the state, and sections 552.108(a)(4) and 552.108(b)(3) of the Government Code are applicable to Exhibit 4.

Accordingly, the district attorney's office may withhold Exhibit 4 under sections 552.108(a)(4) and 552.108(b)(3) of the Government Code.

In summary, the district attorney's office must release the requested grand jury member information. With the exception of basic information, which must be released, the district attorney's office may withhold Exhibits 2 and 3 under section 552.108(a)(2) of the Government Code, and the district attorney's office may withhold Exhibit 4 under sections 552.108(a)(4) and 552.108(b)(3) of the Government Code.

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,

Emily Kunst
Assistant Attorney General
Open Records Division

EK/jm

Ref: ID# 857281

Enc. Submitted documents

c: Requestor
(w/o enclosures)