



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 28, 2022

Mr. Thomas Mitchell
Assistant District Attorney
Parker County District Attorney's Office
117 Fort Worth Highway, 2nd Floor
Weatherford, Texas 76086

OR2022-33527

Dear Mr. Mitchell:

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# 981198.

The Parker County District Attorney's Office (the "district attorney's office") received a request for grand juror information pertaining to a specified case. You state the district attorney's office does not maintain information responsive to a portion of the request.¹ You state some information has been released. You claim some of the submitted information is not subject to the Act. You also claim 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.

The submitted information contains grand jury minutes. The Act applies only to information that is "written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business ... by a governmental body[.]" Gov't Code § 552.002(a)(1). The judiciary is expressly excluded from the requirements of the Act. *Id.* § 552.003(1)(B). This office has determined for purposes of the Act, a grand jury is a part of the judiciary and therefore not subject to the Act. *See* Open Records Decision No. 411 (1984). Further, records kept by a governmental body that is acting as an agent for a grand jury are considered records in the constructive possession of the grand jury, and are also not subject to the Act. *See* Open Records Decisions Nos. 513 (1988), 411, 398 (1983). The fact that information collected or prepared by another person

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

or entity is submitted to the grand jury does not necessarily mean such information is in the grand jury's constructive possession when the same information also is held in the other person's or entity's own capacity. Information held by another person or entity but not produced at the direction of the grand jury may well be protected under one of the Act's specific exceptions to disclosure, but such information is not excluded from the reach of the Act by the judiciary exclusion. *See* ORD 513. You represent the district attorney's office holds the minutes solely as an agent of the grand jury. Based upon this representation, we conclude such information consists of records of the judiciary that are not subject to disclosure under the Act, and the district attorney's office is not required to release the submitted grand jury minutes in response to this request.

Next, the district attorney's office states it does not have information specifically containing the grand jurors' ages but does have information related to some of the jurors' dates of birth. The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983). We note, however, a governmental body has a duty to make a good-faith effort to relate a request for information to information the governmental body holds. *See* Open Records Decision No. 561 (1990). In this instance, the district attorney's office has reviewed its records and determined the information at issue is responsive to the instant request. Thus, we find the district attorney's office has made a good-faith effort to relate the request to information within its possession or control on the date the district attorney's office received the request. Therefore, we find the names and dates of birth of grand jurors are responsive to the instant request. The remaining information you marked is not responsive to the instant request. This ruling does not address the public availability of any information that is not responsive to the request and the district attorney's office is not required to release such information in response to this request.

The the district attorney's office asserts the dates of birth are excepted from public disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. The Third Court of Appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). Thus, the district attorney's office must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the grand jury minutes consists of records of the judiciary that are not subject to disclosure under the Act, and the district attorney's office is not required to release this information in response to this request. The the district attorney's office must withhold all

public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining responsive information must be released.

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,

Paige Lay
Assistant Attorney General
Open Records Division

PL/pt

Ref: ID# 981198

Enc. Submitted documents

c: Requestor
(w/o enclosures)