



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

April 11, 1989

Honorable John Vance
Dallas County District Attorney
Government Center
Dallas, Texas 75202

Dear Mr. Vance:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 5896; this decision is OR89-106.

Under the Open Records Act, all information held by governmental bodies is open unless the information falls within one of the act's specific exceptions to disclosure. The act places on the custodian of records the burden of proving that records are excepted from public disclosure. If a governmental body fails to claim an exception, the exception is ordinarily waived unless the information is deemed confidential under the act. See Attorney General Opinion JM-672 (1987). The act does not require this office to raise and consider exceptions that you have not raised.

The Dallas County District Clerk's Office received a request from the Texas Civil Liberties Union Foundation for "the grand jury venires and grand jury panels for every grand jury selected and/or impaneled in Dallas County since January 1, 1978." On behalf of the Dallas County District Clerk, you argue that the names of prospective and impaneled grand jurors are not available to the public because of section 2(1)(G) of the Open Records Act.

The Open Records Act requires the release of all information held by "governmental bodies" unless one of the act's specific exceptions protects the information from required disclosure. Section 2(1)(G) of the act expressly excludes the judiciary from the act's definition of "governmental body." Additionally, the Open Records Act does not apply to information within the actual or constructive possession of the judiciary. See Open Records Decision No. 513 (1988). When an individual or entity acts at the

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direction of the judiciary and as the agent of the judiciary, information held or collected by the agent is within the judiciary's constructive possession. See id.

A list of prospective grand jurors is not subject to required public disclosure under the Open Records Act when such a list is possessed by an agent of the judiciary. See Open Records Decision No. 433 (1986). Pursuant to the Texas Government Code, however, the Dallas County District Clerk maintains and records the acts and proceedings of a District Court. Gov't Code § 51.303. This includes recording a list of grand jurors impaneled by the court. In Open Records Decision No. 433, this office held that a sheriff is an agent of the judiciary when he uses a list of prospective grand jurors' names to summon the jurors for service. A district clerk who holds a list of the names of prospective grand jurors is properly an agent of the judiciary. Because this list is either actually or constructively in the possession of the judiciary, it is not subject to the Open Records Act.

Nevertheless, a list of names of grand jurors, who are actually impaneled during a particular term of court, is not protected from public disclosure. Open Records Decision No. 433. The names of the grand jurors are recorded as per statute. The names of impaneled jurors may not be withheld from the requestor because the names are a matter of public record. You must release the names of the impaneled grand jury to the requestor.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR89-106.

Yours very truly,

Open Government Section
of the Opinion Committee 

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of the Opinion Committee
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JSR/FAF/bc

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