



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

July 16, 2003

Ms. Julie Joe
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2003-4926

Dear Ms. Joe:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 184292.

Travis County (the "county") received a request for "all current, non-exempt and non-confidential . . . e-mail addresses held by Travis County." The requestor subsequently clarified his request so as to include only those e-mail addresses that the county holds in electronic format, and to exclude any e-mail addresses held in hard copy format only. You claim that a portion of the requested information is not subject to the Public Information Act (the "Act") pursuant to section 552.003(1)(B) of the Government Code. You further claim that some of the remaining requested information is excepted from disclosure under section 552.137 of the Government Code.¹ We have considered your arguments and reviewed the submitted representative sample of information.²

¹We assume that you have released any remaining responsive information, to the extent that it exists, to the requestor. If you have not released any such information, you must release it to the requestor at this time. See Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this

We note that the Act generally requires the 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 in question is performing a judicial function or acting in a purely administrative role. *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)). You contend that the e-mail accounts of judges, justices of the peace, the district clerk, and employees of the foregoing, as well as the information regarding the county I-Jury Online Impaneling System ("I-Jury System"), all of which are maintained by the county Information & Telecommunications Systems Department ("ITS"), are "records of the judiciary" that are not subject to disclosure under the Act.

You state that the I-Jury System "was designed to facilitate the jury impaneling process by allowing potential panel members to submit and receive information online." We note that 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 §§ 62.001-62.011 (detailing jury list selection methods such as a jury wheel and electronic or mechanical selection). Section 62.012 of the Government Code provides the following:

(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.

Gov't Code 62.012. Upon receipt of the jury list, the sheriff summons the prospective jurors to appear on the designated day. Gov't Code § 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 that 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 that the sheriff was considered an agent of the judiciary when using the grand jury list to summon the jurors for service. *Id.*

Furthermore, the district clerk maintains the jury list on behalf and at the direction of the judiciary and the sheriff uses the jury list to summon the prospective jurors at the direction of the judiciary. Thus, the process of jury impanelment is a judicial function. After careful review of your arguments, we find that the county holds information related to the I-Jury System as an agent of the judiciary. Therefore, to the extent that the requested e-mail addresses are contained in the I-Jury System information, they are not subject to release under the Act.³

However, we find that the e-mail addresses maintained by ITS that are not a part of the I-Jury System are records of the county that are being maintained for the county, rather than records of the judiciary. As the county is a governmental body for purposes of the Act, and county records are generally subject to the Act, these e-mail addresses are subject to the Act. *See* Open Records Decision Nos. 646 at 2-3 (1996) (citing *Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.--San Antonio 1983, no writ) (administrative records reflecting day-to-day management of community supervision and corrections department are subject to Act)), 204 at 3 (1978) (information held by county judge is subject to Act except to extent it pertains

³The release of the requested information is within the discretion of the court. *See* Open Records Decision No. 646 at 4 n. 3 (1996) (citing Open Records Decision No. 236 at 2-3 (1980)).

to cases and proceedings before county court); Open Records Letter Nos. 2003-2046 (2003) (cellular phone and pager numbers of judges and justices of the peace are subject to Act), 2002-6294 (2002) (parking records of judges are subject to Act).

You argue that the requested information contains e-mail addresses obtained from members of the public. Section 552.137 of the Government Code makes certain e-mail addresses confidential, and provides:

(a) An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

Gov't Code §552.137. You do not inform us that a member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials. The county must, therefore, withhold the marked e-mail addresses under section 552.137. We note, however, that section 552.137 does not apply to a government employee's work e-mail address, the general e-mail address of a business, nor to a web site or web page.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877)673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512)475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

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CN/jh

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Enc. Submitted documents

c: Mr. Brad L. Armstrong
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(w/o enclosures)