



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 26, 2008

Ms. Jacqueline Cullom Murphy  
Assistant Criminal District Attorney  
Bexar County Criminal District Attorney's Office  
300 Dolorosa Suite 4049  
San Antonio, Texas 78205-3030

OR2008-02545

Dear Ms. Murphy:

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# 304024.

The Bexar County Elections Administrator (the "county") received a clarified request for information involving a specified time interval and relating to (1) individuals who have been removed from the voter rolls due to their alleged non-citizen status and (2) investigations or complaints regarding voter impersonation.<sup>1</sup> You state that the county has no information that is responsive to part two of the request.<sup>2</sup> You assert that some of the submitted information is not subject to the Act. You also state that some of the submitted information is the subject of a previous open records letter ruling. You also claim that the information at issue is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. Additionally, you indicate that the submitted information may be subject to section 552.008 of the Government Code. We have considered your arguments and have reviewed the submitted information.<sup>3</sup>

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<sup>1</sup>See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

<sup>2</sup>We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. 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), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

<sup>3</sup>This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the county to withhold any information that is substantially different from the submitted information. See Gov't Code §§

We first note that some of the submitted information does not appear to be responsive to the instant request. The request is for information "from 2004 to the present[.]" To the extent that the submitted information does not fall within the scope of the specified time interval, it is not responsive to the request. This decision is not applicable to any submitted information that is not responsive to the request, and the county need not release any such information to the requestor. To the extent that the submitted information is responsive to the request, we will consider your arguments against its disclosure.

You contend that the submitted juror form is a judicial record. We note that the Act is applicable only to information that is "collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by [or for] a governmental body." Gov't Code § 552.002(a)(1). The Act is not applicable to records of the judiciary. *See id.* § 552.003(1)(B). Information that is "collected, assembled or maintained by or for the judiciary" is not subject to the Act. *Id.* § 552.0035(a); *see also* Tex. Sup. Ct. R. 12. Consequently, records of the judiciary need not be released under the Act. *See* Attorney General Opinion DM-166 (1992). *But see Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.—San Antonio 1983, no writ); Open Records Decision No. 646 at 4 (1996) (function that a governmental entity performs determines whether it falls within the judiciary exception to the Act). You argue that the submitted juror form is maintained by representatives of the court system, rather than the administrator, and thus is information collected, assembled, or maintained for the judiciary. Based on your representations and our review of the information in question, we conclude that the public availability of the juror form is not governed by the Act but is instead governed by "rules adopted by the Supreme Court of Texas or by other applicable laws and rules" pertaining to information "collected, assembled, or maintained by or for the judiciary." Gov't Code § 552.0035(a), *cf.* Open Records Decision No. 671 (2001). Therefore, the county need not release the submitted juror form in response to this request.

We next note that the remaining information may be subject to disclosure under section 552.008 of the Government Code. This section grants access to requested information, including confidential information, to individual members, agencies, or committees of the Texas Legislature. Section 552.008 provides as follows:

- (a) Th[e Act] does not grant authority to withhold information from individual members, agencies, or committees of the legislature to use for legislative purposes.
- (b) A governmental body on request by an individual member, agency, or committee of the legislature shall provide public information, including

confidential information, to the requesting member, agency, or committee for inspection or duplication in accordance with th[e Act] if the requesting member, agency or committee states that the public information is requested under th[e Act] for legislative purposes. A governmental body, by providing public information under this section that is confidential or otherwise excepted from required disclosure under law, does not waive or affect the confidentiality of the information for purposes of state or federal law or waive the right to assert exceptions to required disclosure of the information in the future. The governmental body may require the requesting individual member of the legislature, the requesting legislative agency or committee, or the members or employees of the requesting entity who will view or handle information that is received under this section and that is confidential under law to sign a confidentiality agreement that covers the information and requires that:

- (1) the information not be disclosed outside the requesting entity, or within the requesting entity for purposes other than the purpose for which it was received;
- (2) the information be labeled as confidential;
- (3) the information be kept securely; or
- (4) the number of copies made of the information or the notes taken from the information that implicate the confidential nature of the information be controlled, with all copies or notes that are not destroyed or returned to the governmental body remaining confidential and subject to the confidentiality agreement.

(c) This section does not affect:

- (1) the right of an individual member, agency, or committee of the legislature to obtain information from a governmental body under other law, including under the rules of either house of the legislature;
- (2) the procedures under which the information is obtained under other law; or
- (3) the use that may be made of the information obtained under other law.

Gov't Code § 552.008. As you note, this request for information was made by State Representative Rafael Anchia. Rep. Anchia does not state, however, and it is not otherwise

clear to this office that his request was made for legislative purposes. Accordingly, we must rule on the applicability of section 552.008 in the alternative. Thus, if Rep. Anchia made this request for legislative purposes, then the county must make the remaining information available to him in accordance with section 552.008 of the Government Code. *See id.* § 552.008(b). We note that the release of this information to Rep. Anchia under section 552.008 does not waive or affect the confidentiality of the information for the purposes of state or federal law or waive the county's right to assert exceptions to required public disclosure of this information in the future. *See id.* But if this request for information was not made for legislative purposes, then the remaining information need not be released under section 552.008, and we will consider your arguments against its public disclosure.

You inform us that the remaining information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2007-10492 (2007). You indicate that there has been no change in the law, facts, and circumstances on which the previous ruling is based. We therefore conclude that the county may continue to rely on Open Records Letter No. 2007-10492 with respect to the remaining information. *See id.* § 552.301(a); Open Records Decision No. 673 at 6-7 (2001) (listing elements of first type of previous determination under Gov't Code § 552.301(a)).

In summary: (1) the juror form is not subject to disclosure under the Act and need not be released in response to this request for information; (2) if Rep. Anchia made this request for legislative purposes, then the county must make the remaining information available to him in accordance with section 552.008 of the Government Code; and (3) if this request was not made for legislative purposes, then the county may continue to rely on Open Records Letter No. 2007-10492 with respect to the remaining information.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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

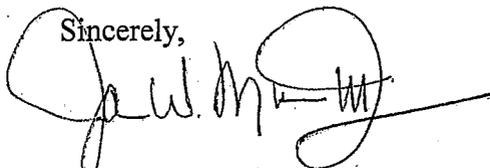
statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 challenge 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 Office of the Attorney General 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. 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,

A handwritten signature in black ink, appearing to read 'J.W. Morris, III', with a long horizontal flourish extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/ma

Ref: ID# 304024

Enc: Submitted documents

c: The Honorable Rafael Anchia  
Texas House of Representatives  
P.O. Box 2910  
Austin, Texas 78768  
(w/o enclosures)