



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 16, 2012

Ms. Kelley Messer  
Assistant City Attorney  
City of Abilene  
P.O. Box 60  
Abilene, Texas 79604-0060

OR2012-02491

Dear Ms. Messer:

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# 445728.

The Abilene City Attorney’s Office (the “city attorney”) received a request for the juror list from a trial on a specified date. You claim the submitted information is not subject to the Act. In the alternative, you claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted information.

You indicate that the submitted information constitutes records of the judiciary and is therefore not subject to the Act. The Act applies to information that is “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). However, a “governmental body” under the Act “does not include the judiciary.” *Id.* § 552.003(1)(B). Information that is “collected, assembled or maintained by . . . the judiciary” is not subject to the Act, but is instead “governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules.” *Id.* § 552.0035(a); *cf.* Open Records Decision No. 131 (1976) (applying statutory predecessor to judiciary exclusion under section 552.003(1)(B) prior to enactment of section 552.0035). In addition, information that is “collected, assembled, or maintained . . . for the judiciary” by a governmental body acting as an agent of the judiciary is not subject to the Act. Gov’t Code § 552.0035(a); *cf.* Attorney General

Opinions DM-166 (1992), H-826 (1976); Open Records Decision Nos. 610 (1992), 572 (1990), 513 (1988), 433 (1986), 274 (1981). To the extent the submitted information is maintained by the city attorney on behalf of the judiciary, we agree it is not subject to the Act and need not be released in response to this request. However, to the extent the submitted information is also maintained by the city attorney, it is subject to the Act and we will address your arguments for this information.<sup>1</sup>

Section 552.101 of the Government Code 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 information other statutes make confidential, such as article 35.29 of the Code of Criminal Procedure. Information collected about jurors in the jury selection process is governed by article 35.29, which provides:

Information collected by the court or by a prosecuting attorney during the jury selection process about a person who serves as a juror, including the juror’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, the prosecuting attorney, the defense counsel, or any court personnel except on application by a party in the trial or on application by a bona fide member of the news media acting in such capacity to the court in which the person is serving or did serve as a juror. On a showing of good cause, the court shall permit disclosure of the information sought.

Crim. Proc. Code art. 35.29. Article 35.29 makes confidential certain personal information pertaining only to those individuals who actually served on the petit jury in a criminal trial. In addition to the confidential information listed in article 35.29, “other personal information” that is confidential pursuant to article 35.29 includes the juror’s present employer, business telephone number, and spouse’s employer. Juror names, however, are not made confidential by article 35.29, and are not “other personal information” that is confidential pursuant to article 35.29. Upon review, we find the city attorney must withhold the information we have marked under section 552.101 of the Government Code in conjunction with article 35.29 of the Code of Criminal Procedure. However, none of the remaining information is subject to article 35.29, and thus no portion of the remaining information may be withheld under section 552.101 on that basis.

In summary, to the extent the submitted information is maintained by the city attorney on behalf of the judiciary, it is not subject to the Act and need not be released in response to this

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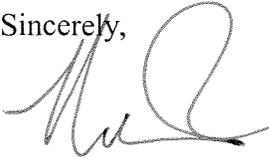
<sup>1</sup>We note a governmental body need not take affirmative steps to create or obtain information that is not in its possession, so long as no other individual or entity holds information on behalf of the governmental body that received the request for it. *See* Gov’t Code § 552.002(a); Open Records Decision Nos. 534 at 2-3 (1989), 518 at 3 (1989).

request. To the extent the submitted information is also maintained by the city attorney, the city attorney must withhold the information we have marked under section 552.101 of the Government Code in conjunction with article 35.29 of the Code of Criminal Procedure, and the remaining 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 [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Nneka Kanu  
Assistant Attorney General  
Open Records Division

NK/em

Ref: ID# 445728

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)