



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 20, 2014

Mr. Michael L. Garza
Assistant District Attorney
Hidalgo County Criminal District Attorney's Office
100 North Closner, Room 303
Edinburg, Texas 78539

OR2014-18869

Dear Mr. Garza:

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# 540132 (Hidalgo County 2014-0102-DA).

The Hidalgo County District Clerk's Office (the "district clerk's office") received a request for the following information for the January 2014 term of the 398th District Court: the process for the grand jury impaneled, the names of the prospective grand jurors and those actually impaneled, and the names of the jury commissioners and the judge who selected them. You state the district clerk's office does not possess information regarding jury commissioners or judges who selected jury commissioners for the term at issue.¹ 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.² We have considered your arguments and reviewed the submitted information.

¹The Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by the governmental body or on its behalf. *See Economic 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).

²Although you do not raise section 552.101 of the Government Code in your brief, we understand you to raise this exception based on your assertion of article 19.42 of the Code of Criminal Procedure. *See Gov't Code* § 552.101 (excepting from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision").

You argue the submitted information constitutes records of the judiciary not subject to the Act. The Act generally requires the public 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 is acting in a judicial capacity or solely in an administrative capacity. *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)).

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

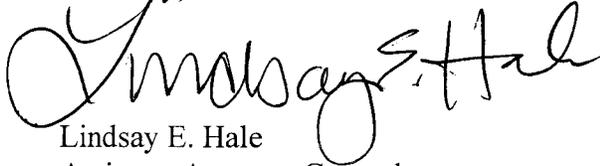
(2) the sheriff or constable, for a justice court jury.

Id. § 62.012. In Open Records Decision No. 433 (1986), this office determined 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. Likewise, the district clerk’s office maintains a jury list on behalf and at the direction of the judiciary. Further, a prospective jury list is created and maintained solely for judicial purposes. Therefore, we conclude the submitted information constitutes records of the judiciary under section 552.003; thus, this information is not subject to the Act. Accordingly, the district clerk’s office is not required to release the submitted information. As we are able to make this determination, we need not address your remaining argument against disclosure of this information.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Lindsay E. Hale". The signature is written in a cursive, flowing style.

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/akg

Ref: ID# 540132

Enc. Submitted documents

c: Requestor
(w/o enclosures)