



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 7, 2014

Ms. Myrna S. Reingold
Staff Attorney
County of Galveston
722 Moody, 5th Floor
Galveston, Texas 77550-2317

OR2014-20336

Dear Ms. Reingold:

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# 542557.

The Galveston County District Attorney's Office (the "district attorney's office") received a request for lists of grand jury members since 2011, information showing who served as the foreperson for each grand jury, and the court assignment for each grand jury. You state the district attorney's office has released some information to the requestor. You claim the submitted information is not subject to the Act. Alternatively, you claim the submitted information is excepted from disclosure under section 552.107 of the Government Code.¹ We have considered the submitted arguments and reviewed the submitted information.

You claim the submitted lists of grand jury members are 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)).*

¹Although you also raise section 552.101 of the Government Code in conjunction with court orders, we note the proper exception to raise in this instance is section 552.107(2) of the Government Code. *See Gov't Code* § 552.107(2).

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-.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. Upon receipt of the jury list, the sheriff summons the prospective jurors to appear on the designated day. *Id.* § 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 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 the sheriff was considered an agent of the judiciary when using the grand jury list to summon the jurors for service. *Id.* However, the district attorney holding a list of names of impaneled jurors was not found to be acting as an agent of the judiciary, since he had "no task to perform with that list." *Id.* at 3. Thus, the list of impaneled jurors held by the district attorney was not within the constructive possession of the judiciary, and was subject to the Act. *Id.*

The grand jury lists at issue are held by the district attorney's office. Based upon the reasoning in Open Records Decision No. 433, we find this information does not constitute records of the judiciary and is therefore subject to the Act. *See Gov't Code § 552.021* (Act generally requires disclosure of information maintained by "governmental body"). Accordingly, we will consider whether the submitted information is excepted from disclosure under the Act.

Section 552.107(2) of the Government Code provides that information is excepted from disclosure if “a court by order has prohibited disclosure of the information.” *Id.* § 552.107(2). You have submitted a copy of a court order that provides in part:

IT IS HEREBY ORDERED THAT THE GALVESTON COUNTY DISTRICT CLERK, DISTRICT ATTORNEY AND THEIR RESPECTIVE STAFFS, ARE TO KEEP ANY RECORD(S) OF THE 56TH JUDICIAL DISTRICT COURT GRAND JURY FOR THE JULY 2014 TERM, INCLUDING, BUT NOT LIMITED TO, GRAND JURORS’ NAMES, ADDRESSES AND PHONE NUMBERS, SEALED AND PRIVATE UNTIL FURTHER ORDER FROM THE COURT MANDATING OTHERWISE OR UNTIL SUCH TIME AS THEIR TERM HAS ENDED.

Order Sealing Names, Addresses and Any Personal Information of Grand Jurors (56th Dist. Ct., Galveston County, Tex., July 8, 2014). You have submitted another copy of a court order stating in part:

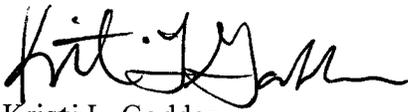
IT IS HEREBY ORDERED THAT THE GALVESTON COUNTY DISTRICT CLERK, DISTRICT ATTORNEY AND THEIR RESPECTIVE STAFFS, ARE TO KEEP ANY RECORD(S) OF THE 122ND JUDICIAL DISTRICT COURT GRAND JURY FOR THE JULY 2014 TERM, INCLUDING, BUT NOT LIMITED TO, GRAND JURORS’ NAMES, ADDRESSES AND PHONE NUMBERS, SEALED AND PRIVATE UNTIL FURTHER ORDER FROM THE COURT MANDATING OTHERWISE OR UNTIL SUCH TIME AS THEIR TERM HAS ENDED.

Order Sealing Names, Addresses and Any Personal Information of Grand Jurors (122nd Dist. Ct., Galveston County, Tex., July 9, 2014). We note the submitted orders are specifically made applicable to the district attorney. You state the submitted information consists of the names of the impaneled grand jurors for the July term for the 56th and the 122nd Judicial District Courts. You further state each grand jury serves a term of three months. Thus, we understand the terms for these grand juries ended in October 2014, and you do not indicate either of the respective courts have entered any further orders regarding the release of the names of the grand jurors at issue. Therefore, based on your representations and our review of the court orders, we conclude the district attorney may not withhold the submitted information under section 552.107(2) of the Government Code. *See* Open Records Decision No. 309 at 5 (1982) (although protective order was in effect when attorney general’s decision was requested, statutory predecessor to Gov’t Code § 552.107(2) was not applicable where related lawsuit was subsequently dismissed). As you claim no other exception to disclosure, the district attorney’s office must release the submitted 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,



Kristi L. Godden
Assistant Attorney General
Open Records Division

KLG/cz

Ref: ID# 542557

Enc. Submitted documents

c: Requestor
(w/o enclosures)