

Tex. Atty. Gen. Op. OR2008-13381 (Tex.A.G.), 2008 WL 4459351

Office of the Attorney General

State of Texas

Informal Letter Ruling No. OR2008-13381

September 30, 2008

\*1 Ms. Donna M. Hawkins  
Assistant District Attorney  
Harris County District Attorney's Office  
1201 Franklin Street Suite 600  
Houston, Texas 77002-1923

Dear Ms. Hawkins:

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# 322272.

The Harris County District Attorney's Office (the "district attorney") received a request for (1) the names of grand jurors and alternates who served on the grand jury that heard a specified case and (2) the court number associated with that grand jury. You state that the requested court number has been released. You claim that the rest of the requested information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted. We also have considered the comments that we received from an attorney for the requestor.<sup>1</sup> See Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

We initially note that only the names of the grand jurors and alternates who served on the grand jury are responsive to this request for information. Thus, the rest of the information contained in the submitted grand jury list is not responsive to the request. This decision does not address the public availability of the submitted information that is not responsive to this request, and the district attorney need not release that information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with article 19.42 of the Code of Criminal Procedure, which provides as follows:

(a) Except as provided by Subsection (b), information collected by the court, court personnel, or prosecuting attorney during the grand jury selection process about a person who serves as a grand juror, including the person'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, court personnel, or prosecuting attorney.

(b) On a showing of good cause, the court shall permit disclosure of the information sought to a party to the proceeding.

CRIM. Proc. Code art. 19.42. Article 19.42 makes confidential certain "personal information" pertaining to individuals who served on grand juries, effective September 1, 1999. This office has determined that article 19.42 does not make the names of such individuals confidential. See [Attorney General Opinion GA-0422 at 3 \(2006\)](#) (grand jurors' identities are not "personal information" for purposes of Crim. Proc. Code art. 19.42); Open Records Decision No. 433 (1986) ("As a practical matter ... the names of the impaneled grand jurors will already have been publicly divulged, since the impaneling will have taken place in open court."). We therefore conclude that the district attorney may not withhold the requested names of grand jurors and

alternates under section 552.101 of the Government Code in conjunction with article 19.42 of the Code of Criminal Procedure. *See* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express, and confidentiality requirement will not be implied from statutory structure), 649 at 3 (1996) (language of confidentiality provision controls scope of its protection), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to public).

\*2 You also claim section 552.107(2) of the Government Code, which provides that information is excepted from disclosure if “a court by order has prohibited disclosure of the information.” Gov’t Code § 552.107(2). You have submitted a copy of a court order that provides in part:

[T]his Court ORDERS the District Clerk of Harris County and his deputies not to release the names, addresses or telephone numbers of members of this Court’s May 2008 Term Grand Jury. This information shall not be released without the express written permission of the duly elected judge of the 183<sup>rd</sup> District Court. This order is to remain in effect until the end of the grand jury term or until further orders of this Court.

Order Sealing Grand Juror Names (183<sup>rd</sup> Dist. Ct., Harris County, Tex., May 5, 2008). We note that the submitted order is specifically made applicable to “the District Clerk of Harris County and his deputies.” *Id.* The order also provides that it is to “remain in effect until the end of the grand jury term or until further orders of this Court.” *Id.* You inform us that the district attorney’s office is not in possession of the requested information as an agent of the Harris County District Clerk. You also state that the district attorney is not a deputy or otherwise an agent or representative of the district clerk for the purposes of the submitted court order. You further inform us that the May 2008 Term of the grand jury ended on August 1, 2008 and that the court has not entered any further orders regarding the release of information relating to the grand jurors for the May 2008 Term. Therefore, based on your representations and our review of the court order, we conclude that the district attorney may not withhold the requested names of grand jurors and alternates 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 requested information must be released.

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). If the governmental body does not file suit over 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).

\*3 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,

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

#### Footnotes

- 1 The requestor's attorney contends, among other things, that the district attorney failed to comply with section 552.301(d) of the Government Code in requesting this decision and should be required to release the requested information. *See* Gov't Code § 552.301(d) (1)-(2). We need not determine, however, whether there was a violation of section 552.301, because the exceptions claimed by the district attorney can provide compelling reasons for non-disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex.App.--Austin 1990, no writ); Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982).

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