



The Attorney General of Texas

April 11, 1984

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Honorable Rene Guerra
Criminal District Attorney
Hidalgo County Courthouse
Edinburg, Texas 78539

Open Records Decision No. 411

Re: Whether the names of individuals subpoenaed before a grand jury are available to the public under the Open Records Act

Dear Ms. Guerra:

You have asked whether the names of individuals subpoenaed to appear before a grand jury are excepted from required public disclosure under the Open Records Act, article 6252-17a, V.T.C.S. These individuals were subpoenaed to offer testimony concerning the disappearance of funds from the office of the Hidalgo County Clerk. You advised us that:

On December 15, 1983, my office presented to a 139th District Court Grand Jury, through the investigator assigned to the case, a report on the case investigation to date. At the grand jury's request, instant grand jury subpoenas were issued for the employees of the county clerk's office to appear before the grand jury that afternoon.

Article 20.10 of the Code of Criminal Procedure provides:

The attorney representing the state, or the foreman [of the grand jury], in term time or vacation, may issue a summons or attachment for any witness in the county where they are sitting; which summons or attachment may require the witness to appear before them at a time fixed, or forthwith, without stating the matter under investigation.

Article 20.13 of the Code of Criminal Procedure provides:

The bailiff or other officer who receives process to be served from a grand jury shall forthwith execute the same and return it to the foreman, if the grand jury be in session; and if the grand jury be not in session, the process

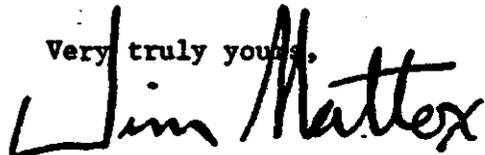
shall be returned to the district clerk. If the process is returned not executed, the return shall state why it was not executed. (Emphasis added).

When the subpoenas at issue here were prepared and issued, the grand jury was in session. Accordingly, both article 20.10 and article 20.13 applied. Given the provisions of these articles, we conclude that the list of individuals who were subpoenaed must be deemed to have been prepared, and the subpoenas to have been issued, by individuals who were in effect acting as agents of the grand jury. The list must, therefore, be deemed to have been constructively in the possession of the grand jury when the request for it was filed, even though it may have physically been in the possession of the district attorney as well as the grand jury.

Since this list was prepared by individuals acting as agents of the grand jury and was constructively in the possession of the grand jury, we conclude that it is not subject to required disclosure under the Act. In our opinion, a grand jury must be considered to be a part of the judiciary, at least for purposes of the Open Records Act. The judiciary is not subject to the act. V.T.C.S. art. 6252-17a, §2(1)(G).

Since we have resolved your question on this basis, we need not address your argument that the report is also excepted from disclosure under sections 3(a)(1), 3(a)(3), and 3(a)(8) of the Act.

Very truly yours,



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