



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 23, 2009

Ms. Michelle T. Rangel
Assistant County Attorney
Fort Bend County
301 Jackson Street, Suite 728
Richmond, Texas 77469-3108

OR2009-00936

Dear Ms. Rangel:

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# 332901.

The Fort Bend County District Attorney's Office (the "district attorney") received a request for (1) all court orders sealing records in criminal cases out of Harris County, and (2) all probable cause affidavits for Harris County criminal cases for which the Fort Bend County district attorney was appointed as a special prosecutor. You inform us that the district attorney does not possess any documents that would be responsive to the request for probable cause affidavits.¹ You argue that the submitted information is not subject to the Act. You also argue that the district attorney is not the proper custodian of the information. In the alternative, you claim that 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 state that the submitted information consists of records maintained by the district clerk on behalf of the judiciary. Records of the judiciary are not subject to required public

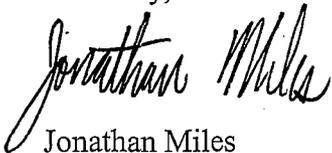
¹ The Act does not require a governmental body to release information that did not exist when a request for information was received, create responsive information, or obtain information that is not held by or on behalf of the district attorney. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

disclosure under the Act.² See Gov't Code §§ 552.003(1)(A), (B) (definition of "governmental body" under Act specifically excludes the judiciary), .021 (Act generally requires disclosure of information maintained by "governmental body"). We note that the submitted information consists of information presented to the court pursuant to a grand jury investigation. Based on your representations and our review, we find that the information at issue consists of records of the judiciary that are not subject to release under the Act. We therefore conclude you do not need to release the submitted information in response to the present request.³

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, 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 at (512) 475-2497.

Sincerely,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 332901

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²Records of the judiciary may be public pursuant to other sources of law. Attorney General Opinions DM-166 at 2-3 (1992) (public has general right to inspect and copy judicial records), H-826 (1976); Open Records Decision No. 25 (1974); see *Star Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (documents filed with courts are generally considered public and must be released).

³As our ruling is dispositive, we need not address your remaining arguments for this information.