



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 13, 2010

Mr. Bill Delmore
Assistant District Attorney
Montgomery County
207 West Phillips, 2nd Floor
Conroe, Texas 77301

OR2010-05182

Dear Mr. Delmore:

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# 376168.

The Montgomery County District Attorney (the "district attorney") received a request for subpoena information relating to a specified case. You state the district attorney does not maintain or have a right of access to some information responsive to the request.¹ You claim the submitted information is not subject to the Act. You alternatively claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.

You inform us the submitted information consists of a grand jury subpoena and records obtained under that subpoena. The judiciary is expressly excluded from the requirements of the Act. Gov't Code § 552.003(1)(B). This office has determined that for the purposes of the Act, a grand jury is a part of the judiciary and is therefore not subject to the Act. See Open Records Decision No. 411 (1984). Further, records kept by a governmental body that

¹We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. See *Econ. 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).

is acting as an agent for a grand jury are considered records in the constructive possession of the grand jury, and therefore are also not subject to the Act. *See* Open Records Decision Nos. 513 (1988), 411 (1984), 398 (1983). *But see* ORD 513 at 4 (defining limits of judiciary exclusion). You state the submitted information is being held by the district attorney as an agent of the grand jury. Accordingly, we find the submitted information consists of records of the judiciary, and therefore, is not subject to disclosure under the Act. As our ruling is dispositive, we do not address your remaining arguments against disclosure of 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.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, toll free, at (888) 672-6787.

Sincerely,



Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/rl

Ref: ID# 376168

Enc. Submitted documents

c: Requestor
(w/o enclosures)