ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 17, 2011

Ms. Kathleen Decker
Litigation Division
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

OR2011-03722

Dear Ms. Decker:

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# 411675 (PIR No. 10.12.27.06).

The Texas Commission on Environmental Quality ("TCEQ") received a request for a specified computer file obtained pursuant to a search warrant. You claim the requested information is not subject to the Act. In the alternative, you claim the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.

You claim the submitted information consists of records of the judiciary. The Act only applies to information that is "collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body." Gov't Code § 552.002(a)(1). The Act does not apply to records of the judiciary. *See id.* § 552.003(1)(B) (definition of "governmental body" under Act specifically excludes the judiciary). Information that is "collected, assembled, or maintained by or for the judiciary" is not subject to the Act. *Id.* § 552.0035(a); *see also* Tex. Sup. Ct. R. 12. Consequently, records of the judiciary need not be released under the Act. *See* Attorney General Opinion DM-166 (1992). *But see Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.—San Antonio 1983, no writ). When an individual or entity acts at the direction of the judiciary as its agent, information prepared or collected by the agent is within the judiciary's constructive possession and is not subject to the Act. *See generally* Open Records Decision No. 513 at 3

(1988) (information in grand jury's constructive possession not subject to the Act). In this instance, you state the submitted information is in TCEQ's possession pursuant to a search warrant issued by the 167th District Court in Travis County (the "district court"). You further state although TCEQ has physical possession of the information at issue, the district court maintains control and constructive possession over it. *See* Code Crim. Proc. arts. 18.10 (providing officer who seized property shall retain custody until the magistrate issues order directing manner of safekeeping), .11 (requiring property seized pursuant to search warrant be kept as provided by order of magistrate). *See generally In re Cornyn*, 27 S.W.3d 327, 333 (Tex. App.—Houston [1st Dist.] 2000) (stating articles 18.10 and 18.11 of the Code of Criminal Procedure extend jurisdiction of property seized under search warrant to court of magistrate to whom the return was made). Thus, you state the information at issue is a judicial record not subject to the Act. Upon review, we agree the submitted information is not subject to release under the Act, and need not be released in response to this request.

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,

Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/tf

Ref: ID# 411675

Enc. Submitted documents

c: Requestor
(w/o enclosures)