



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 26, 2013

Mr. Randall Miller
Assistant Criminal District Attorney
Civil Division
Dallas County
411 Elm Street, Fifth Floor
Dallas, Texas 75202

OR2013-10883

Dear Mr. Miller:

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# 491288.

The Dallas County Medical Examiner's Office (the "medical examiner's office") received three requests for information pertaining to three specified autopsies. You state two of the requested autopsy reports were not completed at the time the medical examiner's office received the requests and the medical examiner's office has no information responsive to portions of the third request.¹ You claim the submitted information is not subject to the Act. In the alternative, you claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered your claims and reviewed the submitted information.

Initially, we note the requested information was the subject of several previous requests for information, as a result of which this office issued Open Records Letter No. 2013-07684 (2013). In that ruling, the medical examiner's office was represented by the Kaufman County Criminal District Attorney's Office (the "Kaufman County district attorney's office"), which provided briefing on behalf of the medical examiner's office and asserted its own law enforcement interest under section 552.108 of the Government Code. This office determined the medical examiner's office may withhold the information at issue under section 552.108 on behalf of the Kaufman County district attorney's office.

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *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 Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

In this instance, the medical examiner's office is represented by the Dallas County District Attorney's Office (the "Dallas County district attorney's office").² In addition to asserting section 552.108 as an exception to disclosure of the submitted information, the Dallas County district attorney's office claims the submitted information is not subject to the Act. Whether information is subject to the Act is a threshold issue that must be addressed before a determination regarding the applicability of an exception to disclosure under the Act can be made. Therefore, we find the law and circumstances on which the previous ruling is based have changed. Consequently, the medical examiner's office may not rely on Open Records Letter No. 2013-07684 as a previous determination with regard to the information at issue. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). Accordingly, we will address the submitted arguments against release of the information.

You indicate that because Kaufman County has no medical examiner, the medical examiner's office performs some autopsies for Kaufman County. You state the autopsies at issue were performed by the medical examiner's office pursuant to an order by the Kaufman County Justice of the Peace, Precinct 3 (the "justice of the peace") as part of an inquest into the death of the individuals. *See* Code Crim. Proc. §§ 49.04 (requiring justice of the peace to conduct inquest in certain circumstances), 49.10 (listing circumstances in which autopsy shall be performed), 49.15(a) (requiring inquest record to be maintained in office of justice of the peace), 49.15(b)(8) (requiring that inquest record include autopsy report); *see also id.* §§ 49.01- 49.24 (providing for duties of justice of the peace with regard to inquests and autopsies); Attorney General Opinion GA-0389 (2005). You explain the submitted information is not a record of the medical examiner's office but is held as a judicial inquest record for the justice of the peace. Thus, the instant request is for information maintained on behalf of the justice of the peace.

We note the Act does not govern access to judicial records. *See* Gov't Code § 552.003(1)(B) (providing that the term "[g]overnmental body" . . . does not include the judiciary"). "Access to information collected, assembled, or maintained by . . . the judiciary is governed by rules adopted by the Texas Supreme Court or by other applicable laws and rules." *Id.* § 552.0035(a). Information collected, assembled, or maintained for the judiciary by an agent of the judiciary is not subject to the Act. *Id.*; *see* Open Records Decision No. 513 at 2 (1988) ("When an individual or entity acts at the direction of a grand jury as the grand jury's agent, information held or collected by the agent is within the grand jury's constructive possession."). Because a justice of the peace is a member of the judiciary, the records that a justice of the peace maintains are not subject to the Act. *See* Tex. Const. Art. V, § 1; Open Records Decision No. 25 (1974). Therefore, the Act "neither authorizes information held by the judiciary to be withheld nor requires it to be disclosed." Open Records

²Two of the instant requests were among the requests at issue in Open Records Letter No. 2013-07684.

Decision No. 25 at 3 (1974) (construing statutory predecessor). In performing the autopsy at issue, the medical examiner's office was acting as the agent of the justice of the peace that ordered the autopsy, and thus, the requested autopsy records are collected and maintained by the medical examiner's office on behalf of the justice of the peace. Accordingly, we find the submitted information is in the constructive possession of the justice of the peace, is consequently not subject to the Act, and need not be released in response to this request for information.³ As we are able to make this determination, we do not address your claimed exception to disclosure.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 491288

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

³We note records of a justice of the peace may be public under other sources of law. See Open Records Decision No. 25 (1974).