



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 13, 2014

Ms. Savannah Gonzalez
Assistant District Attorney
Hidalgo County
100 North Closner Boulevard, Room 303
Edinburg, Texas 78539

OR2014-14161

Dear Ms. Gonzalez:

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# 532646 (County ID# 2014-0074-DA).

The Hidalgo County District Clerk's Office (the "district clerk's office") received two requests from the same requestor for the names of all jury commissioners and the judge who selected those commissioners, the names of prospective and impaneled grand jurors, the court in which the grand jurors were impaneled, the time period in which the grand jurors were impaneled, and the process of selecting the grand jurors to be impaneled over a specified time period. You state you have released some information to the requestor. You argue the submitted information is not subject to the Act. In the alternative, you claim 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.

Initially, we note a portion of the submitted information, which we have marked, is not responsive to the instant requests because it was created after the requests were received. This ruling does not address the public availability of non-responsive information, and the department is not required to release non-responsive information in response to these requests.

You assert the information at issue constitutes records of the judiciary. The Act applies only to information that is "written, produced, 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). However, the Act’s definition of “governmental body” “does not include the judiciary.” *See id.* § 552.003(1)(B). 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); Open Records Decision No. 646 at 4 (1996) (“function that a governmental entity performs determines whether the entity falls within the judiciary exception to the . . . Act.”). This office has determined a grand jury, for purposes of the Act, 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 another person or entity acting as an agent for a grand jury are considered to be records in the constructive possession of the grand jury and, therefore, are not subject to the Act. *See* Open Records Decisions Nos. 513 (1988), 433, (1986), 398 (1983). *But see* ORD 513 at 4 (defining limits of judiciary exclusion). However, the fact that information collected or prepared by another person or entity is submitted to the grand jury does not necessarily mean such information is in the grand jury’s constructive possession when the same information is also held in the other person’s or entity’s own capacity. Information held by another person or entity but not produced at the direction of the grand jury may well be protected under one of the Act’s specific exceptions to disclosure, but such information is not excluded from the reach of the Act by the judiciary exclusion. *See id.*

You explain the responsive information consists of information maintained by the district clerk’s office regarding grand jury members and grand jury commissioners. You state this information is maintained solely for the judiciary. Based on your representations and our review of the information at issue, we conclude the responsive information is held by the district clerk’s office as an agent of the grand jury and is in the constructive possession of the grand jury. Thus, this information consists of records of the judiciary that are not subject to the disclosure requirements of the Act, and the district clerk’s office need not release this information in response to these requests.¹

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

¹As our ruling is dispositive, we need not address your argument against disclosure.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Neal". The signature is fluid and cursive, with the first name "Tim" being more prominent than the last name "Neal".

Tim Neal
Assistant Attorney General
Open Records Division

TN/bhf

Ref: ID# 532646

Enc. Submitted documents

c: Requestor
(w/o enclosures)