



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 16, 2016

Mr. Randall Miller
Assistant District Attorney
Civil Division
County of Dallas
411 Elm Street, 5th Floor
Dallas, Texas 75202

OR2016-06086

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# 601913.

The Dallas County Medical Examiner's Office (the "medical examiner's office") received a request for certain information pertaining to a named individual, including an autopsy report. You indicate you do not have information responsive to portions of the request.¹ You assert the submitted information is not subject to the Act. We have considered the submitted argument and reviewed the submitted information.

You indicate that because McLennan County has no medical examiner, the medical examiner's office performs some autopsies for McLennan County. You state, and provide documentation showing, the autopsy at issue was performed by the medical examiner's office pursuant to an order by the McLennan County Justice of the Peace, Precinct 1 (the "justice of the peace") as part of a judicial inquest into the death of the named individual. *See* Code Crim. Proc. §§ 49.04 (requiring justice of the peace to conduct inquest in certain circumstances), .10 (listing circumstances in which autopsy shall be performed), .15(a) (requiring inquest record to be maintained in office of justice of the peace), .15(b)(8) (requiring that inquest record include autopsy report); *see also id.* §§ 49.01- .24 (providing

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *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), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

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 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 the instant request for 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.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,



Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/som

Ref: ID# 601913

Enc. Submitted documents

c: Requestor
(w/o enclosures)