



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 20, 2016

Mr. Andrew Wipke
Assistant District Attorney
County of Wichita
900 Seventh Street
Wichita Falls, Texas 76301-2482

OR2016-21240

Dear Mr. Wipke:

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# 627147 (ORR# 1007).

The Wichita County Clerk's Office and the Wichita County District Attorney's Office (collectively, the "county") received a request for information related to all complaints regarding election violations, election fraud, and voter fraud during a specified time period. You argue the submitted information does not consist of public information 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 the submitted arguments and reviewed the submitted information.

Initially, you state the submitted information "is from records of the grand jury" and was "collected at the grand jury's discretion." Thus, you argue the information is not subject to the Act. The judiciary is expressly excluded from the requirements of the Act. *See* Gov't Code § 552.003(1)(B). This office has determined that for purposes of the Act, a grand jury is part of the judiciary and is therefore not subject to the Act. *See* Open Records Decision No. 411 (1984). Moreover, 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

are therefore not subject to the Act. *See* Open Records Decisions Nos. 513 (1988), 398 (1983). *But see* ORD 513 at 4 (defining limits of judiciary exclusion). 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 also is 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.*; *cf. id.* at 3 (information collected at the express direction of the grand jury is in constructive possession of the grand jury and not subject to the Act). Therefore, to the extent the county has possession of the information at issue as an agent of the grand jury, the information is in the grand jury's constructive possession and is not subject to the Act. This decision does not address the public availability of any such information, which need not be released to the requestor. To the extent the county maintains the submitted information in its own capacity, any such information is subject to the Act and must be released unless the information falls within the scope of an exception to disclosure. Therefore, we will address your remaining argument against disclosure of the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the submitted information relates to a closed criminal investigation that did not result in conviction or deferred adjudication. Based on your representation and our review, we find the county may withhold the submitted information under section 552.108(a)(2) of the Government Code.

In summary, to the extent the county has possession of the information at issue as an agent of the grand jury, the information is in the grand jury's constructive possession, is not subject to the Act, and need not be released in response to the instant request. To the extent the county maintains the submitted information in its own capacity, the county may withhold the submitted information under section 552.108(a)(2) of the Government Code.

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,

A handwritten signature in black ink, appearing to read "Claire V. Morris Sloan". The signature is fluid and cursive, with a large initial "C" and "M".

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 627147

Enc. Submitted documents

c: Requestor
(w/o enclosures)