



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 4, 2009

Mr. Michael M. Kelly  
Assistant Criminal District Attorney  
Victoria County  
205 North Bridge Street, Suite #301  
Victoria, Texas 77901

OR2009-02829

Dear Mr. Kelly:

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# 336288.

The Victoria County Criminal District Attorney (the "district attorney") received a request for all information pertaining to a named individual regarding cause number 1-90,683 and four other specified incidents, as well as all other information regarding the named individual. You state the district attorney has provided some of the requested information pertaining to cause number 1-90,683 to the requestor. You assert the submitted hospital records are not subject to the Act. Alternatively, you claim the submitted hospital records are excepted from disclosure under section 552.101 of the Government Code. We have considered your claims and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note you have submitted information pertaining to only cause number 1-90,683. To the extent information responsive to the other four incidents specified in the request existed on the date the district attorney received this request, we assume you have released it. If you have not released any such records, you must do so at this time. *See Gov't Code §§ 552.301(a), .302; see also Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).*

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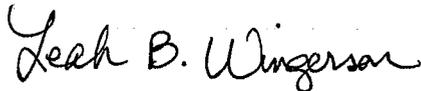
<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See Open Records Decision Nos. 499 (1988), 497 (1988).* This open records letter does not reach, and, therefore, does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

You assert the submitted hospital records are not subject to the Act because they were obtained pursuant to a grand jury subpoena. The judiciary is expressly excluded from the requirements of the Act. Gov't Code § 552.003(1)(B). This office has determined that 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), 398 (1983). *But see* ORD 513 at 4 (defining limits of judiciary exclusion). You state the submitted hospital records were obtained pursuant to a grand jury subpoena and are being held by the district attorney as an agent of the grand jury. Thus, the submitted hospital records are in the grand jury's constructive possession and are not subject to the Act. As our ruling is dispositive, we need not address your remaining arguments against disclosure of this 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.oag.state.tx.us/open/index\\_orl.php](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 at (512) 475-2497.

Sincerely,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/cc

Ref: ID# 336288

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)