



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 2, 2013

Mr. Wesley N. Hinch
Liberty County Attorney
P.O. Box 9127
Liberty, Texas 77575

OR2013-05246

Dear Mr. Hinch:

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# 482982.

The Liberty County Attorney's Office (the "county attorney's office") received a request for all e-mails and correspondence for a named individual during a specified time period. You state you are releasing some information to the requestor. You claim some of the submitted information is not subject to the Act. In the alternative, you claim the information at issue is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.111 of the Government Code. We have considered your arguments and reviewed the submitted information.

You assert some of the submitted information constitutes records of the judiciary. The Act applies only to information that is "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), 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.*

In this instance, you state some of the submitted information is maintained by the county attorney's office on behalf of the grand jury. Thus, the information is in the custody of the county attorney's office as an agent for the grand jury. Accordingly, the information we have marked consists of records of the judiciary that are not subject to release under the Act, and the county attorney's office need not release the information in response to this request.¹ As you raise no further exceptions to disclosure for the remaining information, it must be released to the requestor.

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, 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, toll free, at (888) 672-6787.

Sincerely,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/bhf

¹We note records of the judiciary may be public under other sources of law. *See* Gov't Code §§29.007(d)(4) (complaints filed with municipal court clerk), .007(f) (municipal court clerks shall perform duties prescribed by law for county court clerk); Loc. Gov't Code § 191.006 (records belonging to the office of county clerk shall be open to public unless access restricted by law or court order); *see also Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (documents filed with courts are generally considered public and must be released); Attorney General Opinions DM-166 (1992) at 2-3 (public has general right to inspect and copy judicial records), H-826 (1976); Open Records Decision No. 25 (1974). Further, as our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Ref: ID# 482982

Enc. Submitted documents

c: Requestor
(w/o enclosures)