



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 18, 2013

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

OR2013-12330

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# 494249.

The Dallas County Medical Examiner's Office (the "medical examiner's office") received two requests from the same requestor for the autopsy reports and investigative narratives for fifteen named individuals and for the names, ages, and causes and locations of death of the victims of the West, Texas explosion. You state the medical examiner's office does not maintain information responsive to a portion of the first request for information.¹ You argue the requested information is not 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 exception you claim and reviewed the submitted representative sample of information.²

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).

²We assume 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 those records contain substantially different types of information than that submitted to this office.

You state the medical examiner's office performs autopsies as ordered by the justices of the peace for smaller surrounding counties. In counties with no medical examiner, a justice of the peace has the authority to conduct an inquest and order an autopsy to be performed. *See* Code Crim. Proc. §§ 49.04 (requiring justice of the peace to conduct an inquest in certain circumstances), 49.10 (listing circumstances in which an autopsy shall be performed). *See also id.* §§ 49.01- 49.24 (providing for the duties of a justice of the peace with regard to inquests and autopsies); Attorney General Opinion GA-0389 (2005). For each inquest conducted, a justice of the peace is required to make an inquest record that must include the autopsy report if an autopsy was performed. *See* Code Crim. Proc. § 49.15(b)(8). The inquest record is to be maintained in the office of the justice of the peace. *See id.* § 49.15(a).

You state the submitted records were created by the medical examiner's office pursuant to an order from the McLennan County Justice of the Peace, Precinct 3 (the "justice of the peace"). You state the justice of the peace issued the order pursuant to section 49.10(c)(1) of the Code of Criminal Procedure. *See* Code Crim. Proc. § 49.10(c)(1) (providing that, except in certain circumstances, for each body that is the subject of an inquest by a justice of the peace, the justice, in the justice's discretion, shall direct a physician to perform an autopsy). A justice of the peace is a member of the judiciary. *See* Tex. Const. Art. V; Open Records Decision No. 25 (1974). It is well established 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). While the Act's definition of a "governmental body" is broad, it specifically excludes "the judiciary." *See id.* § 552.003(1)(A), (B). Moreover, information that is "collected, assembled or maintained by . . . the judiciary" is not subject to the Act, but is "governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules." *Id.* § 552.0035(a). In addition, information that is "collected, assembled, or maintained . . . for the judiciary" by an agent of the judiciary is not subject to the Act. *Id.* § 552.0035(a); *cf.* Attorney General Opinions DM-166 (1992), H-826 (1976); Open Records Decision Nos. 610 (1992), 572 (1990), 513 (1988), 274 (1981).

We find in creating the records at issue, the medical examiner's office was acting as the agent of the justice of the peace that ordered the autopsies, and thus, the requested records are collected and maintained by the medical examiner's office on behalf of the justice of the peace. As such, the requested records are in the constructive possession of the justice of the peace, and thus, are not subject to the Act and need not be released pursuant to the instant request for information. *Cf.* Open Records Decision Nos. 513 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); 398 at 3 (1983) (audit prepared by private auditor at direction of grand jury not within the ambit of the Act). As our ruling is dispositive, we do not address your remaining argument against disclosure of the 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,

A handwritten signature in black ink that reads "Claire Morris Sloan". The signature is written in a cursive, flowing style.

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 494249

Enc. Submitted documents

c: Requestor
(w/o enclosures)