



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 27, 2015

Mr. Randall Miller
Assistant District Attorney
Dallas County District Attorney's Office
411 Elm Street, 5th Floor
Dallas, Texas 75202

OR2015-17939

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# 577245.

The Dallas County Medical Examiner's Office (the "medical examiner's office") received several requests from five requestors for the autopsy records and all related documentation for nine named individuals. You state some of the requested information does not exist.¹ You also assert the requested information is not subject to the Act. In the alternative, you claim the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information, a portion of which is a representative sample.² We have also

¹The Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by the governmental body or on its behalf. See *Economic 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), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

²We 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.

received and considered comments from one of the requestors. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released).

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 autopsies at issue were 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 an inquest into the death of the named individuals. *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 for duties of justice of the peace with regard to inquests and autopsies); Attorney General Opinion GA-0389 (2005). You explain the requested 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 requests are 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 autopsies 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 autopsy records are collected and maintained by the medical examiner's office on behalf of the justice of the peace. Accordingly, we find the requested 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 requests for information.³ As we are able to make this determination, we do not address your claimed exceptions to disclosure.

³We note records of a justice of the peace may be public under other sources of law. *See* Open Records Decision No. 25 (1974).

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 cursive script that reads "Abigail T. Adams".

Abigail T. Adams
Assistant Attorney General
Open Records Division

ATA/akg

Ref: ID# 577245

Enc. Submitted documents

c: 5 Requestors
(w/o enclosures)