



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 17, 2016

Ms. Tanya E. Pino
Assistant County Attorney
County of Montgomery
501 North Thompson, Suite 300
Conroe, Texas 77301

OR2016-06201

Dear Ms. Pino:

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# 601927 (ORR File 15PIA812).

The Montgomery County Forensic Services Department (the "department") received a request for specified information regarding all department employees during a specified time; specified resumes; the number of autopsies performed by each physician during a specified time; the number of autopsies resulting in specified manners of death; specified sections of autopsy reports for autopsies completed by a named department physician, during a specified time, and with a specified manner of death; and specified sections of autopsy reports completed by a named department physician where specified notations were made. You state you released some information. You state you have no information responsive to portions of the request.¹ You further claim the remaining requested information consists of records

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).

of the judiciary. We have considered your claims and reviewed the submitted representative sample of information.²

You state that because Montgomery County (the “county”) does not have a medical examiner, the department performs autopsies for the county as ordered by a justice of the peace. 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* Crim. Proc. Code §§ 49.04 (requiring justice of the peace to conduct an inquest in certain circumstances), .10 (listing circumstances in which an autopsy shall be performed). *See also id.* §§ 49.01-.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* Crim. Proc. Code § 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 requested autopsy reports were created by the department upon receipt of an order from a justice of the peace issued pursuant to section 49.10(c)(1) of the Code of Criminal Procedure. *See* Crim. Proc. Code § 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 that 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 that in performing the autopsies at issue, the department was acting as the agent of the justice of the peace who ordered each autopsy, and thus, the requested autopsy reports are collected and maintained by the department on behalf of the justice of the peace. As such, the requested autopsy reports are in the constructive possession of the justice of the peace; thus, the submitted information is not subject to the Act and need not be released

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

pursuant to its provisions. *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).

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,



Meagan J. Conway
Assistant Attorney General
Open Records Division

MJC/akg

Ref: ID# 601927

Enc. Submitted documents

c: Requestor
(w/o enclosures)