



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 13, 2016

Mr. Matthew Grove  
Assistant County Attorney  
County of Fort Bend  
401 Jackson Street, 3<sup>rd</sup> Floor  
Richmond, Texas 77469

OR2016-15867

Dear Mr. Grove:

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# 618107.

The Galveston County Medical Examiner's Office (the "medical examiner's office"), which you represent, received a request for an autopsy report pertaining to a named individual. You assert the submitted information consists of records of the judiciary. In the alternative, you claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

We understand that because some counties have no medical examiner, the medical examiner's office performs autopsies for other counties 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 arts. 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.* arts. 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 art. 49.15(b)(8). The inquest record is to be maintained in the office of the justice of the peace. *See id.* art. 49.15(a).

You state the autopsy at issue relates to a pending criminal investigation and prosecution. The submitted information reveals the injury occurred in Fort Bend County (the “county”), and the county is conducting the criminal investigation. You indicate that because the county has no medical examiner, the medical examiner’s office performs some autopsies for the county. We understand the deceased was found in the Brazoria County. Article 49.10(o) of the Code of Criminal Procedure provides if a person is injured in one county and dies as a result of those injuries, with the death occurring in another county, the attorney representing the state in the prosecution of felonies in the county in which the injury occurred may request a justice of the peace in the county in which the death occurred to order an autopsy be performed on the body of the deceased person. *See id.* art. 49.10(o). You state the autopsy at issue was performed by the medical examiner’s office pursuant to an order by the Brazoria County Justice of the Peace, Precinct 1 issued pursuant to article 49.10(c)(1) of the Code of Criminal Procedure. *See id.* art. 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 that in performing the autopsy at issue, the medical examiner’s office was acting as the agent of the Brazoria County Justice of the Peace, Precinct 1 who ordered the autopsy, and, thus, the submitted autopsy report is collected and maintained by the medical examiner’s office on behalf of the Brazoria County Justice of the Peace, Precinct 1. As such, the submitted autopsy report is in the constructive possession of the Brazoria County Justice of the Peace, Precinct 1. Thus, the submitted information is not subject to the Act and need not be released 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).<sup>1</sup>

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<sup>1</sup>As we are able to make this determination, we need not address your remaining argument against disclosure of the submitted 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](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, appearing to read "Kenny Moreland", written in a cursive style.

Kenny Moreland  
Assistant Attorney General  
Open Records Division

KJM/som

Ref: ID# 618107

Enc. Submitted documents

c: Requestor  
(w/o enclosures)