



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 19, 2015

Mr. Mark T. Smith  
Sherrard & Roe, P.L.C.  
150 3rd Avenue South, Suite 1100  
Nashville, Tennessee 37201

OR2015-09676

Dear Mr. Smith:

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# 564005.

Forensic Medical Management Services of Texas Holding ("FMMS"), which you represent, received a request for investigative and autopsy reports, toxicology, and microscopic examinations of children less than one year old at the autopsy facilities in Beaumont and Tyler during a specified time period.<sup>1</sup> You claim FMMS is not a governmental body subject to the Act. You further claim the requested information consists of records of the judiciary. Alternatively, you claim the requested information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered your claims and reviewed the submitted representative sample of information.<sup>2</sup>

You state FMMS is a private entity that, pursuant to contracts with various counties, performs autopsies as ordered by the justices of the peace for the counties. In counties with no medical examiner, a justice of the peace has the authority to conduct an inquest and order

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<sup>1</sup>You state FMMS was previously known as the Southeast Texas Forensic Center.

<sup>2</sup>We 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.

an autopsy to be performed. *See* Crim. Proc. Code §§ 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* 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 records were created by FMMS 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, FMMS was acting as the agent of the justice of the peace who ordered each autopsy, and thus, the requested records are collected and maintained by FMMS 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 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). As our ruling is dispositive, we do not address your remaining arguments.

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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 564005

Enc. Submitted documents

c: Requestor  
(w/o enclosures)