



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 16, 2017

Ms. Erin D. Thorn  
Assistant District Attorney  
Hidalgo County  
100 North Closner, Room 303  
Edinburg, Texas 78539

OR2017-05406

Dear Ms. Thorn:

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# 649412 (File No. 2016-0150-DA).

The Hidalgo County District Attorney's Office (the "district attorney's office") received a request for specified information pertaining to jurors related to a specified cause number. You state the district attorney's office does not possess some of the requested information.<sup>1</sup> You claim the submitted information is not subject to the Act. In the alternative, you claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted information. We have also received and considered comments from the requestor. *See Gov't Code* § 552.304 (interested party may submit comments stating why information should or should not be released).

You assert the submitted information constitutes records of the judiciary. The Act applies only to information that is "written, produced, collected, assembled, or maintained under a

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<sup>1</sup>The 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).

law or ordinance or in connection with the transaction of official business” by a governmental body. *Id.* § 552.002(a)(1). However, the Act’s definition of “governmental body” “does not include the judiciary.” *See id.* § 552.003(1)(B). Information that is “collected, assembled or maintained by or for the judiciary” is not subject to the Act. *Id.* § 552.0035(a); *see also* TEX. R. JUD. ADMIN. 12. Consequently, records of the judiciary need not be released under the Act. *See* Attorney General Opinion DM466 (1992). *But see Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.— San Antonio 1983, no writ); Open Records Decision No. 646 at 4 (1996) (“function that a governmental entity performs determines whether the entity falls within the judiciary exception to the . . . Act.”). This office has determined a grand jury, for purposes of the Act, is a part of the judiciary and is, therefore, not subject to the Act. *See* Open Records Decision No. 411(1984). Further, records kept by another person or entity acting as an agent for a grand jury are considered to be records in the constructive possession of the grand jury and, therefore, are not subject to the Act. *See* Open Records Decision Nos. 513 (1988), 398 (1983). *But see* ORD 513 at 4 (defining limits of judiciary exclusion). However, the fact that information collected or prepared by another person or entity is submitted to the grand jury does not necessarily mean such information is in the grand jury’s constructive possession when the same information is also held in the other person’s or entity’s own capacity. Information held by another person or entity but not produced at the direction of the grand jury may well be protected under one of the Act’s specific exceptions to disclosure, but such information is not excluded from the reach of the Act by the judiciary exclusion. *See id.*

You explain the submitted information is held by the district attorney’s office on behalf of the grand jury. You state the information is not held by the district attorney’s office for any other purpose. Based on this explanation, we conclude the submitted information is held by the district attorney’s office as an agent of the grand jury and is in the constructive possession of the grand jury. Thus, this information consists of records of the judiciary and is not subject to the disclosure requirements of the Act, and the district attorney’s office need not release this information in response to this request.<sup>2</sup>

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.

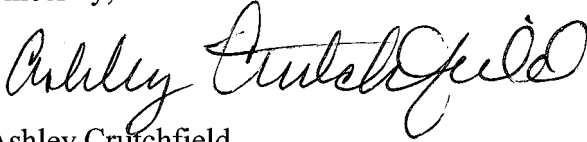
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure.

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 "Ashley Crutchfield". The signature is written in a cursive style with a large initial 'A'.

Ashley Crutchfield  
Assistant Attorney General  
Open Records Division

AC/bw

Ref: ID# 649412

Enc. Submitted documents

c: Requestor  
(w/o enclosures)