



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 13, 2018

Ms. Agatha Wade
Assistant Criminal District Attorney
Bexar County
101 West Nueva Street, Seventh Floor
San Antonio, Texas 78205

OR2018-03325

Dear Ms. Wade:

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# 695611 (BCCDA File# 6142).

The Bexar County Medical Examiner's Office (the "medical examiner's office") received a request for information pertaining to an autopsy report of a named individual and information pertaining to a specified investigative report. You state you have no information responsive to a portion of the request.¹ You claim the submitted information is not subject to the Act. 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.

You represent the medical examiner's office performs autopsies for smaller surrounding counties. You state, and provide documentation showing, the autopsy at issue was performed by the medical examiner's office pursuant to an order by the Wilson County

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).

Justice of the Peace, Precinct 3 (the “justice of the peace”) as part of a judicial inquest into the death of the named individual. *See* Crim. Proc. Code arts. §§ 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.* arts. §§ 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 submitted 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 request is 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.” ORD 25 at 3 (construing statutory predecessor). In performing the autopsy at issue, the medical examiner’s office was acting as the agent of the justice of the peace who ordered the autopsy, and thus, the requested records are collected and maintained by the medical examiner’s office on behalf of the justice of the peace. Accordingly, we find the submitted 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 request for information.²

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

²As we are able to make this determination, we do 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 'Meagan J. Conway', with a long, sweeping line extending from the end of the signature towards the top right of the page.

Meagan J. Conway
Assistant Attorney General
Open Records Division

MC/sb

Ref: ID# 695611

Enc. Submitted documents

c: Requestor
(w/o enclosures)