



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 27, 2019

Ms. Kathleen M. Kennedy
Chief Civil Attorney
Jefferson County
1085 Pearl Street, 3rd Floor
Beaumont, Texas 77701

OR2019-17616

Dear Ms. Kennedy:

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# 772447.

The Jefferson County District Attorney's Office and the Jefferson County District Clerk's Office (collectively, the "county") received requests from the same requestor for multiple categories of records pertaining to the requestor during specified time periods. You state the county does maintain information responsive to portions of the requests.¹ You claim the submitted information is not subject to the Act. Alternatively, you claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 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).

The judiciary is expressly excluded from the requirements of the Act. *See id.* § 552.003(1)(B); *see also id.* § 552.0035 (access to judicial records is governed by rules

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).

adopted by Supreme Court of Texas or other applicable laws or rules). This office has determined a grand jury, for purposes of the Act, is a part of the judiciary and therefore is 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 Decisions Nos. 513 (1988), 398 (1983). *But see* ORD 513 at 4 (defining limits of judiciary exclusion). The fact that information collected or prepared by another person or entity is submitted to the grand jury does not necessarily mean that 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* ORD 513. You state the submitted information consists of documents maintained within the grand jury investigation file pertaining to a pending criminal prosecution. Thus, we understand you to state this information is held by the county solely as an agent of the grand jury. Based on your representations, we conclude the submitted information consists of judicial records not subject to the Act and the county need not release it in response to this request.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 providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kieran Hillis
Assistant Attorney General
Open Records Division

KH/be

²As we are able to make this determination, we need not address your remaining arguments against disclosure of the submitted information.

Ref: ID# 772447

Enc. Submitted documents

c: Requestor
(w/o enclosures)