



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

February 10, 2020

Mr. Bob D. Odom  
Assistant District Attorney  
Bell County  
P.O. Box 540  
Belton, Texas 76513-0540

OR2020-03831

Dear Mr. Odom:

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# 810982.

The 27th Judicial District Attorney's Office (the "district attorney's office") received a request for eleven categories of information related to a specified grand jury indictment. You state the district attorney's office does not have information responsive to portions of the request.<sup>1</sup> Additionally, you state the district attorney's office has released some of the requested information. You claim the remaining requested information is not subject to the Act. We have considered your arguments and reviewed the submitted information.

You assert the remaining requested information is not subject to the Act because it consists of records of the grand jury in the specified case. The judiciary is expressly excluded from the requirements of the Act. *See* Gov't Code § 552.003(1)(B); *see also id.* § 552.0035 (access to judicial records is governed 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 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

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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 12 (1990).

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. We understand the remaining requested information is maintained by the district attorney's office solely as an agent of the grand jury at issue. Therefore, we conclude the remaining requested information is not subject to the Act and need not be released in response to this request for 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Paige Lay  
Assistant Attorney General  
Open Records Division

PL/jxd

Ref: ID# 810982

Enc. Submitted documents

c: Requestor  
(w/o enclosures)