



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 6, 2020

Mr. Sterling T. Burleson
Counsel for the Nolan County District Attorney's Office
Sterling Burleson
156 East 2nd Street
Colorado City, Texas 79512

OR2020-07091

Dear Mr. Burleson:

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# 815678.

The Nolan County District Attorney's Office (the "district attorney's office"), which you represent, received a request for multiple categories of information pertaining to a specified grand jury indictment. 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 552.101 of the Government Code. We have considered your arguments and reviewed the submitted information.

We note 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 rules 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 records of a grand jury that are maintained and kept solely by the Nolan County District Clerk. Further, you inform us “[n]one of these records are kept or maintained by the [district attorney’s office],” and that “[t]he District Clerk maintains these records on behalf of and acting as an agent for the grand jury.” Based on these representations, we conclude the submitted information consists of judicial records that are not subject to the Act, and the district attorney’s office need not release the submitted information in response to this request.¹

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,



Kieran Hillis
Assistant Attorney General
Open Records Division

KH/mo

Ref: ID# 815678

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹ As we are able to make this determination, we do not address your remaining argument to withhold the submitted information.